

315T. PUBLIC AMUSEMENT AND ENTERTAINMENT

Injuries to participants or spectators of unauthorized racing upon public highways, see AUTOMOBILES ¶168(10)

Licensing and regulation of motor vehicles for purposes of transportation, and liability for injuries arising from the operation and use of such vehicles, see AUTOMOBILES

Licensing and regulation of ski lifts and similar devices, and liability for injuries to passengers, see CARRIERS and NEGLIGENCE

Discrimination as to admission or accommodations by reason of race, color, etc., see CIVIL RIGHTS

Governmental immunity of the owner or operator of a place of public amusement or entertainment for injuries to persons attending, see COUNTIES, MUNICIPAL CORPORATIONS, STATES and other "government" topics

Amount, elements and measure of damages for personal injuries to participants or spectators, see DAMAGES and DEATH

Emotional distress or mental anguish resulting from exclusion, ejection or the exercise of control of persons attending, see DAMAGES III(A)2

Wrongful death actions, procedural aspects of, see DEATH

Regulation of fireworks, and liability for injuries from the use of, see EXPLOSIVES

Injuries caused by food, see FOOD

Licensing and regulation of gambling establishments and implements, and betting on races or other contests, see GAMING

Children, special regulations as to employment or admission, see INFANTS

Federal taxes on admissions to cabarets, see INTERNAL REVENUE ¶4803

Accrual, computation and tolling of statutes of limitations on actions for personal injuries to persons attending, see LIMITATION OF ACTIONS

Liability of participants or spectators for injuries to co-participants or co-spectators, see NEGLIGENCE X

Premises liability of residential landowners for recreational injuries, see NEGLIGENCE XVII

Recreational use immunity, see NEGLIGENCE XVII(F)

Releases of liability, arising out of personal injuries to participants or spectators, executed after the injury, see RELEASE

Administrative searches of licensed and regulated facilities, see SEARCHES AND SEIZURES

Injuries arising out of the use of ships, boats and other watercraft for purposes of transportation, and injuries to passengers aboard cruise ships, see SHIPPING

"Sales" and other taxes not related to the licensing of, admission to, or the services provided by the licensee of, a covered activity or event, see TAXATION

Limitations on the location of, or use of land for, public amusements and entertainment pursuant to zoning and planning statutes or regulations, see ZONING AND PLANNING

I. IN GENERAL, ¶1-11.

II. LICENSING AND REGULATION, ¶12-64.

(A) IN GENERAL, ¶12-49.

(B) TAXES AND FEES, ¶50-64.

III. RIGHT OF ADMISSION OR ACCOMMODATION; TICKETS, ¶65-74.

IV. PERSONAL INJURIES, ¶75-169.

(A) IN GENERAL, ¶75-119.

(B) DEFENSES, MITIGATING CIRCUMSTANCES AND STATUTORY LIMITATIONS OF LIABILITY, ¶120-139.

(C) ACTIONS, ¶140-169.

V. LOSS OF OR INJURY TO PROPERTY, ¶170.

VI. CRIMINAL RESPONSIBILITY, ¶171-177.

I. IN GENERAL.

1. In general.

2. What law governs.

3. Preemption.

4. Constitutional, statutory and regulatory provisions.

5. — In general.

6. — Motion pictures in general.

7. — Racing in general.

8. — Taxes and fees.

9. — Sexually oriented entertainment.

(1). In general.

(2). Dancing and other performances.

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(3). Motion pictures, videos and games.

- 10. — Personal injuries.
- 11. — Retroactive operation.

II. LICENSING AND REGULATION.**(A) IN GENERAL.**

- 12. In general.
- 13. Administrative agencies and proceedings in general.
- 14. Judicial review or intervention in general.
- 15. Concerts, performances, theaters and shows in general.
- 16. — In general.
- 17. — Motion pictures in general.
- 18. — Animal performances and shows.
- 19. — Administrative agencies and proceedings.
- 20. — Judicial review or intervention.
- 21. Amusement parks and rides.
- 22. — In general.
- 23. — Administrative agencies and proceedings.
- 24. — Judicial review or intervention.
- 25. Games, sports, athletic activities and contests in general.
- 26. — In general.
- 27. — Boxing, wrestling and martial arts.
- 28. — Games of chance and skill; arcade and video games.

Excludes games that are predominantly athletic in nature.

- 29. — Administrative agencies and proceedings.
- 30. — Judicial review or intervention.
- 31. Racing in general.
- 32. — In general.
- 33. — Horse and dog racing.
- 34. — Motor vehicles.
- 35. — Administrative agencies and proceedings.
 - (1). In general.
 - (2). Horse and dog racing.
- 36. — Judicial review or intervention.
 - (1). In general.
 - (2). Horse and dog racing.
- 37. Skiing, ice skating and winter activities.
- 38. — In general.
- 39. — Skiing and snowboarding.

Ski lifts, see CARRIERS.

II. LICENSING AND REGULATION.(Cont'd)

- 40. — Administrative agencies and proceedings.
- 41. — Judicial review or intervention.
- 42. Swimming, bathing and other water activities.
- 43. Social dancing and dance halls.
- 44. Sexually oriented entertainment.
- 45. — In general.
- 46. — Dancing and other performances.
- 47. — Motion pictures, videos and games.
- 48. — Administrative agencies and proceedings.
- 49. — Judicial review or intervention.

(B) TAXES AND FEES.

See also TAXATION and INTERNAL REVENUE.

- 50. In general.
- 51. Concerts, performances, theaters and shows in general.
- 52. Amusement parks and rides.
- 53. Games, sports, athletic activities and contests in general.
- 54. — In general.
- 55. — Games of chance and skill; arcade and video games.

Excludes games that are predominantly athletic in nature.
- 56. Racing in general.
- 57. Skiing, ice skating and winter activities.
- 58. Swimming, bathing and other water activities.
- 59. Social dancing and dance halls.
- 60. Sexually oriented entertainment.
- 61. Administrative agencies and proceedings.
- 62. Judicial review or intervention.

III. RIGHT OF ADMISSION OR ACCOMMODATION; TICKETS.

- 65. In general.
- 66. Right of owner or operator to exclude, eject or control conduct of persons attending.
- 67. Remedy for exclusion, ejection or exercise of control by owner or operator.

Personal injuries resulting from exclusion, ejection or the exercise of control, see IV. Emotional distress or mental anguish resulting from exclusion, ejection or the exercise of control, see DAMAGES III(A)2.
- 68. Sale, resale or transfer of tickets in general.

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III. RIGHT OF ADMISSION
OR ACCOMMODATION;
TICKETS.(Cont'd)

- 69. — In general.
- 70. — Ticket pricing; scalping.
See also ¶176.
- 71. Season tickets.
- 72. Administrative agencies and proceedings.
- 73. Judicial review or intervention.

IV. PERSONAL INJURIES.

(A) IN GENERAL.

- 75. In general.
- 76. Care required in general; insuring safety.
- 77. Duty to licensees or invitees in general.
- 78. Duty affected by charging for admission in general.
- 79. Concerts, performances, theaters and shows in general.
- 80. Amusement parks in general.
- 81. Games, sports, athletic activities and contests in general.
- 82. — In general.
- 83. — Baseball and softball.
- 84. — Golf.
- 85. — Boxing, wrestling and martial arts.
- 86. — Roller skating.
- 87. — Games of chance and skill; arcade and video games.
 - (1). In general.
 - (2). Bowling.
- 88. Riding and racing in general.
- 89. — In general.
- 90. — Horses and other animals.
Liability of stables and other riding facilities, see topic ANIMALS.
- 91. — Motor vehicles.
Injuries to participants or spectators of unauthorized racing upon public highways, see AUTOMOBILES ¶168(10).
- 92. — Amusement rides and devices.
- 93. Skiing, ice skating and winter activities.
- 94. — In general.
- 95. — Skiing and snowboarding.
Liability of facility operator or premises owner for injuries to passengers on ski lifts, see CARRIERS. Skiing or snowboarding safety statutes, see ¶137.
- 96. — Ice skating and hockey.
- 97. Swimming, bathing and other water activities.
- 98. — In general.
- 99. — Diving.

IV. PERSONAL INJURIES.(Cont'd)

- 100. Social dancing and dance halls.
 - 101. Spectators and other non-participants, injuries to.
 - 102. — In general.
 - 103. — Exterior grounds in general.
 - 104. — Walkways, doors, entryways and exits.
 - 105. — Buildings, structures, fixtures and appliances in general.
 - 106. — Floors.
Injuries from falls on floors used for social dancing, see ¶100.
 - 107. — Aisles, seats, balconies and bleachers.
 - 108. — Steps, stairs and ramps.
 - 109. — Injury from game, performance or activity.
 - (1). In general.
 - (2). Balls, bats and pucks.
 - 110. — Injury from assaults and willful acts of participants and performers.
Liability of participants, performers or employees, see ASSAULT AND BATTERY, LABOR AND EMPLOYMENT and NEGLIGENCE.
 - 111. — Injury from crowds, other spectators or non-participants.
Liability of members of crowd, other spectators or non-participants, see ASSAULT AND BATTERY and NEGLIGENCE.
 - 112. — Lighting of activity or facility.
 - 113. — Off-premises injuries.
 - 114. Persons liable and persons entitled to sue.
- (B) DEFENSES, MITIGATING CIRCUMSTANCES AND STATUTORY LIMITATIONS OF LIABILITY.
- Duty to mitigate damages, see DAMAGES.*
- 120. In general.
 - 121. Plaintiff's conduct or fault.
 - 122. — In general.
 - 123. — Spectators and other non-participants, injuries to.
 - 124. Fault of third persons.
 - 125. Assumption of risk.
Statutory limitations of liability, see ¶133.
 - 126. — In general.
 - 127. — Particular cases.
 - 128. — Spectators and other non-participants, injuries to.
 - 129. Pre-injury releases.
Post-injury releases, see RELEASE.

316E. PUBLIC ASSISTANCE**IV. PERSONAL INJURIES.(Cont'd)**

- 130. — In general.
- 131. — Operation and effect of statutory provisions.
- 132. Immunity.
Immunity pursuant to safety statutes and other statutory limitations of liability, see §133.
- 133. Statutory limitations of liability.
- 134. — In general.
- 135. — Equine activity.
- 136. — Roller skating.
- 137. — Skiing and snowboarding.

(C) ACTIONS.

- 140. In general.
- 141. Time to sue and limitations.
See also LIMITATION OF ACTIONS.
- 142. Parties.
- 143. Pleading.
- 144. Evidence in general.
- 145. Burden of proof and presumptions.
- 146. — In general.
- 147. — Spectators and other non-participants, injuries to.
- 148. Res ipsa loquitur.
- 149. — In general.
- 150. — Spectators and other non-participants, injuries to.
- 151. Admissibility of evidence.
- 152. — In general.
- 153. — Spectators and other non-participants, injuries to.
- 154. Weight and sufficiency of evidence.
- 155. — In general.
- 156. — Spectators and other non-participants, injuries to.
- 157. — Defenses and mitigating circumstances.
- 158. — Statutory limitations of liability.
- 159. Questions of fact.
- 160. — In general.
- 161. — Spectators and other non-participants, injuries to.
- 162. — Defenses and mitigating circumstances.
- 163. — Statutory limitations of liability.
- 164. Instructions.
- 165. Verdict and findings.

V. LOSS OF OR INJURY TO PROPERTY.

- 170. In general.

VI. CRIMINAL RESPONSIBILITY.

- 171. In general.
- 172. License violations in general.
- 173. Social dancing and dance halls.
- 174. Sexually oriented entertainment.
- 175. Racing and racetracks.
- 176. Ticket pricing; scalping.
See also §70.
- 177. Prosecution and punishment.

316E. PUBLIC ASSISTANCE**SUBJECTS INCLUDED**

Assistance for needy, aged, blind, or disabled persons
 Assistance for needy families
 Food stamps and related programs
 Benefits for temporarily disabled workers
 Responsibility for aid under poor laws

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Asylums for indigent children, aged persons, etc., see ASYLUMS AND ASSISTED LIVING FACILITIES
 Child and foster care providers, see INFANTS
 Medicare, Medicaid, and other medical assistance, see HEALTH III
 Mentally deficient or ill persons, care when indigent, see MENTAL HEALTH
 Particular personal relations, duties incident to, see MARRIAGE AND COHABITATION, PARENT AND CHILD, and other specific topics
 Private pension systems for employees, see LABOR AND EMPLOYMENT
 Public employees' retirement and pensions, see MUNICIPAL CORPORATIONS, STATES, UNITED STATES, and other specific topics
 Railroad employees' retirement benefits, see LABOR AND EMPLOYMENT

316E. PUBLIC ASSISTANCE

Social security old age, survivors, and disability benefits, see **SOCIAL SECURITY**

Unemployment compensation, see **UNEMPLOYMENT COMPENSATION**

- I. PROGRAMS IN GENERAL, ¶1-79.
- II. FAMILY ASSISTANCE, ¶80-149.
- III. FOOD AND NUTRITION ASSISTANCE, ¶150-169.
- IV. STATE ASSISTANCE FOR BLIND, DISABLED, AND ELDERLY PERSONS, ¶170-199.
- V. STATE BENEFITS FOR TEMPORARY DISABILITY OF WORKERS, ¶200-209.
- VI. STATE AND LOCAL RESPONSIBILITY FOR AID UNDER "POOR LAWS", ¶210-219.

I. PROGRAMS IN GENERAL.

- 1. In general.
- 2. Constitutional and statutory provisions.
- 3. — In general.
- 4. — Purpose.
- 5. — Construction.
- 6. — Validity.
- 7. — Retrospective operation.
- 8. What law governs.
- 9. Preemption.
- 10. Obligation of support in general.
- 11. — In general; right to support.
- 12. — Obligation of public authorities.
- 13. — Obligation of relatives and third parties.
- 14. Relief and welfare funds; disbursements.
- 15. State plans and conformity to federal standards in general.
- 16. — In general.
- 17. — Waivers; implementation of experimental projects.
- 18. — Proceedings and judicial review; actions.
- 19. Administration of programs.
- 20. — In general.
- 21. — Federal agencies, boards, and officers.
- 22. — State and local agencies, boards, and districts.
 - (1). In general.
 - (2). Officers and employees.
 - (3). Authority, powers, and duties.

I. PROGRAMS IN GENERAL.(Cont'd)

- 23. Reporting requirements; records.
- 24. Rules and regulations.
- 25. Programs.
- 26. — In general.
- 27. — Programs of general assistance.
- 28. — Housing and shelter allowances; moving expenses.
- 29. — Energy assistance.
- 30. — Work programs in general.
- 31. — Emergency assistance.
 - (1). In general.
 - (2). Energy assistance.
- 32. — Other programs or allowances.
- 33. Eligibility in general.
- 34. — In general.
- 35. — Residency.
- 36. — Aliens.
- 37. — Resources.
 - (1). In general.
 - (2). Income in general.
 - (3). Income allowances.
 - (4). Public benefits.
 - (5). Real property and other assets.
- 38. — Disqualifying factors; duty of applicants to act or seek other assistance.
- 39. Work requirements.
- 40. Education or training in lieu of work.
- 41. Sterilization or birth control as condition for receipt of benefits.
- 42. Amount of assistance.
- 43. Payment; payees.
- 44. Retroactive payment of benefits.
- 45. Replacement of lost benefits.
- 46. Reduction, termination, or temporary termination of benefits.
- 47. — In general.
- 48. — Misconduct or noncooperation; failure to report.
 - (1). In general.
 - (2). Work or education requirements.
 - (3). Crimes.
- 49. Durational limitations.
- 50. Private providers; reimbursement.
- 51. Administrative proceedings.
- 52. — In general.
- 53. — Application for benefits.
- 54. — Investigations and interviews.
- 55. — Time for hearing.

316E. PUBLIC ASSISTANCE**I. PROGRAMS IN GENERAL.**(Cont'd)

- 56. — Notice and hearing.
- 57. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Weight and sufficiency.
- 58. — Findings and determination.
- 59. — Reopening, rehearing, and reconsideration.
- 60. — Administrative review.
- 61. Judicial review; actions.
- 62. — In general.
- 63. — Decisions reviewable; exhaustion of administrative remedies.
- 64. — Time for proceedings.
- 65. — Record.
- 66. — Scope of review.
- 67. — Harmless error.
- 68. — Further review.
- 69. — Findings and determination.
- 70. Recovery from recipient or estate; set-offs; liens.
- 71. Recovery from others.
- 72. Costs and attorney fees.
- 73. Offenses and prosecutions.
- 74. Fines and penalties.

II. FAMILY ASSISTANCE.

- 80. In general.
- 81. Constitutional and statutory provisions.
- 82. — In general.
- 83. — Purpose.
- 84. — Construction.
- 85. — Validity.
- 86. — Retrospective operation.
- 87. What law governs.
- 88. Preemption.
- 89. Relief and welfare funds; disbursement.
- 90. State plans and conformity to federal standards.
- 91. — In general.
- 92. — Conformity with eligibility and benefit standards.
- 93. — Proceedings and review; actions.
- 94. — Penalties.
- 95. Administration of programs.
 - (1). In general.

II. FAMILY ASSISTANCE.(Cont'd)

- (2). Federal agencies, boards, and officers.
- (3). State and local agencies, boards, and districts.
- (4). — In general.
- (5). — Officers, agents, and employees.
- (6). — Authority, powers, and duties.
- 96. Reporting requirements; records.
- 97. Rules and regulations.
- 98. Federally assisted aid for families.
- 99. — In general.
- 100. — Eligibility.
 - (1). In general.
 - (2). Residency.
 - (3). Aliens.
 - (4). Young parents.
 - (5). Custody and support.
 - (6). — In general.
 - (7). — Caretakers.
 - (8). — Absence or incapacity of parent; deprivation of support.
 - (9). Assistance units; lodgers.
 - (10). Remarriage; presence of person in loco parentis.
 - (11). Absence of minor from home.
 - (12). Unborn children; age of children.
 - (13). Disqualifying factors; duty of recipient to act.
 - (14). Resources.
 - (15). — In general.
 - (16). — Income in general.
 - (17). — Income allowances.
 - (18). — Public benefits.
 - (19). — Real property and other assets.
- 101. — Amount of assistance.
 - (1). In general.
 - (2). Child support collections.
 - (3). Family income; effect of work incentives and other aid.
 - (4). Needs of family unit and members.
 - (5). Size of family unit; increases in family size; consolidated or flat grants.
 - (6). Other public benefits.

316E. PUBLIC ASSISTANCE**II. FAMILY ASSISTANCE.(Cont'd)**

- (7). Cost of living adjustments.
- 102. Work or education requirements; incentive programs, unemployment and disability.
- 103. Sterilization or birth control as condition for receipt of benefits.
- 104. Preschool and day care allowances.
- 105. Other programs and benefits.
- 106. Emergency assistance.
- 107. Payment; payees.
- 108. Retroactive payment of benefits.
- 109. Replacement of lost benefits.
- 110. Reduction, termination, or temporary termination of benefits.
- 111. — In general.
- 112. — Misconduct or noncooperation.
 - (1). In general.
 - (2). Work or education requirements.
 - (3). Crimes.
- 113. Durational limitations.
- 114. — In general.
- 115. — Hardship exception.
- 116. Administrative proceedings.
- 117. — In general.
- 118. — Application for benefits.
- 119. — Investigations and interviews.
- 120. — Notice and hearing.
- 121. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Weight and sufficiency.
- 122. — Findings and determination.
- 123. — Reopening, rehearing and reconsideration.
- 124. — Administrative review.
- 125. Judicial review; actions.
- 126. — In general.
- 127. — Decisions reviewable; exhaustion of administrative remedies.
- 128. — Scope of judicial review.
- 129. — Findings and determination.
- 130. Recovery from recipient or estate; set-offs; liens.
- 131. Recovery from others.
- 132. Costs and attorney fees.
- 133. Offenses and prosecutions.
- 134. Fines and penalties.

III. FOOD AND NUTRITION ASSISTANCE.

- 150. In general.
- 151. Constitutional and statutory provisions.
- 152. Food stamp program.
- 153. — In general.
- 154. — Eligibility and disqualification of recipients.
- 155. — Eligibility and disqualification of providers.
- 156. Aid to consumers.
- 157. Meal and nutrition programs.
- 158. Other programs and allowances.
- 159. Administrative proceedings.
- 160. Judicial review; actions.
- 161. Costs and attorney fees.
- 162. Offenses and prosecutions.
- 163. Fines and penalties.

IV. STATE ASSISTANCE FOR BLIND, DISABLED, AND ELDERLY PERSONS.

- 170. In general.
- 171. Obligation to support in general; right to support.
- 172. Constitutional and statutory provisions.
 - (1). In general.
 - (2). Purpose.
 - (3). Construction.
 - (4). Validity.
 - (5). Retrospective operation.
- 173. Relief and welfare funds; disbursements.
- 174. State plans and conformity to federal standards.
- 175. Administration of programs.
- 176. Rules and regulations.
- 177. State assistance to blind and disabled.
- 178. — In general.
- 179. — Vocational rehabilitation assistance.
- 180. — In-home services and allowances.
- 181. — Eligibility in general.
 - (1). In general.
 - (2). Residency.
 - (3). Aliens.
 - (4). Resources.
 - (5). — In general.
 - (6). — Income in general.
 - (7). — Deductions and allowances in general.

316H. PUBLIC CONTRACTS**IV. STATE ASSISTANCE FOR BLIND, DISABLED, AND ELDERLY PERSONS.(Cont'd)**

- (8). — Other benefits.
- (9). — Real property and other assets.
- 182. — Other disqualifiers from receipt or continued receipt of benefits.
 - (1). In general.
 - (2). Imprisonment, conviction, parole or probation status, or flight.
- 183. — Amount of assistance.
- 184. — Payment; payees.
- 185. — Administrative proceedings.
 - (1). In general.
 - (2). Application for benefits.
 - (3). Time for proceedings.
 - (4). Notice and hearing.
 - (5). Evidence.
 - (6). — In general.
 - (7). — Presumptions and burden of proof.
 - (8). — Weight and sufficiency.
 - (9). Findings and determination.
 - (10). Reopening; rehearing and reconsideration.
 - (11). Administrative review.
- 186. — Judicial review; actions.
 - (1). In general.
 - (2). Decisions reviewable; exhaustion of remedies.
 - (3). Proceedings for review; record.
 - (4). Scope of judicial review.
 - (5). Findings and determination.
 - (6). Further review.
- 187. State old age assistance.
- 188. — In general.
- 189. — Eligibility.
- 190. — Proceedings and review.
- 191. Private providers; reimbursement.
- 192. Recovery of assistance paid; setoffs; liens.
- 193. Recovery of interim assistance paid.
- 194. Costs and attorney fees.
- 195. Offenses and prosecutions.
- 196. Fines and penalties.

V. STATE BENEFITS FOR TEMPORARY DISABILITY OF WORKERS.

- 200. In general.

V. STATE BENEFITS FOR TEMPORARY DISABILITY OF WORKERS.(Cont'd)

- 201. Coverage of statutes; right to benefits.
- 202. — In general.
- 203. — Nature and extent of disability.
- 204. — Existence and duration of employment.
- 205. Private or voluntary plans.
- 206. Proceedings.
- 207. Payment, setoff, recoupment, and liens.

VI. STATE AND LOCAL RESPONSIBILITY FOR AID UNDER "POOR LAWS".

- 210. In general.
- 211. Constitutional and statutory provisions.
 - (1). In general.
 - (2). Purpose.
 - (3). Construction.
 - (4). Validity.
 - (5). Retrospective operation.
- 212. Who are paupers and indigent persons.
- 213. Duty of relief under poor laws in general.
- 214. Poor law districts, other government entities, and officers.
- 215. Legal settlements.
- 216. Removal.
- 217. Obligation of poor districts and other government entities for support and services.
- 218. Recovery for support and services against other districts, government entities, and individuals.
- 219. Offenses and prosecutions.

316H. PUBLIC CONTRACTS**SUBJECTS INCLUDED**

Contracts, other than employment, between government bodies and private entities; intergovernmental contracts

The manner of letting and executing such contracts, their validity, and their construction, operation, performance, and breach

316H. PUBLIC CONTRACTS

Assignment of public contracts or rights thereunder
Contractors' bonds

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Individual employment contracts for government employees, see particular governmental topic

Collective employment contracts for government employees, see LABOR AND EMPLOYMENT

Private contracts with nongovernmental entities, such as private colleges or schools, see EDUCATION

Sale or disposition of real property, see particular governmental topic

Leases of property, see particular governmental topic

I. IN GENERAL, ¶100–119.**II. BIDDING AND BID PROTESTS, ¶120–179.****III. FORMATION OF CONTRACT, ¶180–199.****IV. CONTRACTOR BONDS, ¶200–249.****V. CONSTRUCTION AND OPERATION, ¶250–299.****VI. ASSIGNMENT OR SUBCONTRACT, ¶300–309.****VII. MODIFICATION, ¶310–319.****VIII. RESCISSION, TERMINATION, OR ABANDONMENT, ¶320–339.****IX. PERFORMANCE OR BREACH, ¶340–399.****X. RIGHTS AND REMEDIES OF CONTRACTORS, ¶400–429.****XI. RIGHTS AND REMEDIES OF THIRD PARTIES, ¶430–449.****XII. RIGHTS AND REMEDIES OF GOVERNMENT ENTITY, ¶450–459.****XIII. CRIMES AND PROSECUTIONS, ¶460.****I. IN GENERAL.**

100. In general.
101. Constitutional and statutory provisions.
102. What law governs.
103. Preemption.
104. Authority and capacity to contract in general.
105. Authority and capacity of particular governmental bodies to contract.

I. IN GENERAL.(Cont'd)

106. Powers of officers to contract.
107. Individual interest of contracting officer or body; conflict of interest.
108. Power to bind successors.
109. Appropriation or provision for payment as prerequisite of contract.
110. Term or duration of contract.

II. BIDDING AND BID PROTESTS.

120. In general.
121. Constitutional and statutory provisions.
122. Necessity for submission to competition in general.
123. Power to let contract without submission to competition or to dispense with requirements.
124. Request for bids.
125. — In general; advertising.
126. — Specifications.
127. Bidders.
128. — In general.
129. — Preferences and set-asides.
130. — Conditions and restrictions on bidders.
131. — Debarment and suspension of bidders.
132. Bids.
133. — In general.
134. — Form and requisites; responsiveness.
135. — Subbids.
136. — Time for making bid.
137. — Amendment, correction, or withdrawal.
138. — Deposit or other security.
139. Acceptance or rejection.
140. — In general.
141. — Evaluation process.
142. — Good faith; fairness.
143. — Requests for verification; confirmation.
144. — Time for opening bids.
145. — Time for approving or rejecting bids as proper vel non.
146. — Reconsideration.
147. Determinative factors in making award.
148. — In general.
149. — Lowest bid.

316H. PUBLIC CONTRACTS**II. BIDDING AND BID PROTESTS.(Cont'd)**

- 150. — Reliability and responsibility of bidder.
- 151. — Character of materials and mode of work.
- 152. Award.
- 153. — In general.
- 154. — Time for making award.
- 155. — Operation and effect.
- 156. — Failure to enter into contract; cancellation of solicitation.
- 157. Rights and remedies of disappointed bidders; bid protests.
- 158. — In general.
- 159. — Administrative procedures in general.
- 160. Judicial remedies and review.
- 161. — In general.
- 162. — Conditions precedent; exhaustion of administrative remedies.
- 163. — Parties; standing.
- 164. — Scope of review.
- 165. — Time for proceedings.
- 166. — Evidence.
- 167. — Determination and disposition.
- 168. — Recovery of bid preparation costs.

III. FORMATION OF CONTRACT.

- 180. In general.
- 181. Constitutional and statutory provisions.
- 182. Express contracts in general.
- 183. Provisions required by law or regulation.
- 184. Formal requisites.
- 185. Necessity of writing.
- 186. Validity and sufficiency of contract.
- 187. — In general.
- 188. — Manner of making contract.
- 189. — Effect of partial invalidity.
- 190. — Presumption in favor of validity.
- 191. Implied contracts.
- 192. — In general.
- 193. — Subject matter.
- 194. Unauthorized or illegal contracts.
- 195. — In general.
- 196. — Ratification.

IV. CONTRACTOR BONDS.

- 200. In general.
- 201. Constitutional and statutory provisions.

IV. CONTRACTOR BONDS.(Cont'd)

- 202. Necessity.
- 203. Power to require.
- 204. Requisites and sufficiency in general.
- 205. Qualification and approval of surety.
- 206. Construction of bond and surety's liability in general.
- 207. Performance of work, guaranty, and repairs.
- 208. Payment for labor and materials in general.
- 209. Claims and persons secured.
- 210. — In general.
- 211. — Labor or services in general.
- 212. — Materials and supplies in general.
- 213. — Use or incorporation in work.
- 214. — Equipment, rental or repair.
- 215. — Loans or advances.
- 216. — Subcontractors.
- 217. — Sub-subcontractors and remote materialmen.
- 218. — Assignees.
- 219. — Extra work, changes, and repairs.
- 220. — Interest, costs, and taxes.
- 221. — Liabilities incurred for damages or to third persons.
- 222. — Supplies or property purchased or rented.
- 223. Actions on bonds.
- 224. — In general.
- 225. — Jurisdiction and venue.
- 226. — Conditions precedent.
- 227. — Notice of claim.
 - (1). In general.
 - (2). Service or presentation; timeliness.
 - (3). Form and sufficiency.
 - (4). Waiver and estoppel.
- 228. — Defenses.
 - (1). In general.
 - (2). Estoppel.
- 229. — Time for proceedings.
- 230. — Persons entitled to sue.
- 231. — Parties.
- 232. — Persons liable.
- 233. — Pleading.
- 234. — Evidence.
- 235. — Questions of fact or law.
- 236. — Amount of recovery.

316H. PUBLIC CONTRACTS**IV. CONTRACTOR BONDS.(Cont'd)**

- 237. — Costs and fees; interest.
- 238. — Set-offs, deductions, and credit.
- 239. Rights and remedies of sureties.

V. CONSTRUCTION AND OPERATION.

- 250. In general.
- 251. What law governs.
- 252. Application of general rules of construction in general.
- 253. — In general.
- 254. — Construction against government in general.
- 255. — Construction as a whole.
- 256. Deference to agency interpretation.
- 257. Ambiguity in general.
- 258. Patent ambiguity doctrine; duty to inquire before bidding.
- 259. Extrinsic evidence.
- 260. Parties.
- 261. Third-party beneficiaries.
- 262. Subject-matter.
- 263. — In general.
- 264. — Bailments and leases.
- 265. — Construction of buildings and other public works.
- 266. — Goods sold or furnished.
- 267. — Provision of services.
- 268. — Title to goods or property.
- 269. Place and time of performance.
- 270. Conditions.
- 271. Compensation.
- 272. — In general.
- 273. — Cost-plus contracts.
- 274. — From special fund or appropriation.
- 275. — From proceeds of assessments or special taxes.
- 276. Extra costs or expenses in general.
- 277. Changed or unexpected conditions.
- 278. Change in plans.
- 279. Defective plans and mistakes.
- 280. Representations and specifications misleading contractor.
- 281. Conduct of contractor and third persons; relation to subcontractor.
- 282. Repairs and tests.
- 283. Taxes and interest.
- 284. Liquidated damages.

V. CONSTRUCTION AND OPERATION.(Cont'd)

- 285. Time element; consequences of delay.
- 286. Termination or modification of original contract.
- 287. Preserving right to claim for extras; estoppel.

VI. ASSIGNMENT OR SUBCONTRACT.

- 300. In general.
- 301. Assignability; government approval.
- 302. Filing requirement.
- 303. Soliciting bids for subcontracting; "bid chiseling".

VII. MODIFICATION.

- 310. In general.
- 311. Acts constituting.
- 312. Authority of officer to modify.
- 313. Authority of government entity to modify.
- 314. Material amendments doctrine.
- 315. Consideration.
- 316. Validity of assent.
- 317. Operation and effect.

VIII. RESCISSION, TERMINATION, OR ABANDONMENT.

- 320. In general.
- 321. Constitutional and statutory provisions.
- 322. Time of termination; waiver or loss of right.
- 323. Grounds in general.
- 324. Termination for default.
- 325. Notice to cure.
- 326. Operation and effect.

IX. PERFORMANCE OR BREACH.

- 340. In general.
- 341. Constitutional and statutory provisions.
- 342. Contractor's responsibility for nonperformance by subcontractor.
- 343. Implied duties and warranties.
- 344. — In general.
- 345. — Good faith and fair dealing.
- 346. — Cooperation.
- 347. Sufficiency of performance in general.
- 348. Excuses for nonperformance in general.
- 349. Tender of performance.

316H. PUBLIC CONTRACTS**IX. PERFORMANCE OR BREACH.(Cont'd)**

- 350. Acceptance of performance; approval or certificate of architect or engineer.
- 351. Waiver of rights under contract.
- 352. Reletting contract on failure of performance.
- 353. Completion of contract by government entity or surety in general.
- 354. Delivery.
- 355. Leases to government entity.
- 356. Alternative dispute resolution; arbitration of disputes.
- 357. Decisions of contracting officers on contract disputes.
- 358. — In general.
- 359. — Mistake.
- 360. — Construction of contracts.
- 361. — Time for filing claim.
- 362. — Failure to make decision.
- 363. — Conclusiveness of decision.
 - (1). In general.
 - (2). Exceptions; fraud or mistake.
- 364. — Review.
 - (1). In general.
 - (2). Necessity of claim.
 - (3). What constitutes a "claim".
 - (4). Boards of contract appeals.
 - (5). Jurisdiction of reviewing court.
 - (6). Effect of defective or missing certification.
 - (7). Scope of review.
 - (8). Evidence.
 - (9). Determination and disposition.
- 365. Withholding payments.
- 366. Defective plans or change of plans.
- 367. Replacement of materials under erroneous rulings.
- 368. Alterations and additional or extra work.
- 369. Partial performance.
- 370. Substantial performance.
- 371. Delay of government and liability for damages.
- 372. Delay of contractor.
- 373. Miscellaneous acts or conduct constituting breach.
- 374. Exhaustion of funds.
- 375. Cancellation of contract.
- 376. Wage increases and failure to provide labor.

X. RIGHTS AND REMEDIES OF CONTRACTORS.

- 400. In general.
- 401. Constitutional and statutory provisions.
- 402. Recovery of deductions.
- 403. Breach of contract by government entity, rights on.
- 404. Relief of contractors in general; misrepresentation and mistake.
- 405. Cancellation or termination of contract in general, rights of contractors.
- 406. Unauthorized or illegal contracts.
- 407. Rights as to improvements funded with assessments.
- 408. Settlement, release, and waiver in general.
- 409. Remedies of contractors.
- 410. — In general.
- 411. — Time for proceedings.
- 412. — Conditions precedent.
- 413. — Defenses.
- 414. — Pleading.
- 415. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Weight and sufficiency.
 - (4). — In general.
 - (5). — Breach of contract.
 - (6). — Cancellation or termination.
 - (7). — Equitable adjustments.
 - (8). — Damages.
- 416. — Damages and amount of recovery.
 - (1). In general.
 - (2). Cancellation or termination.
 - (3). Breach of contract in general.
 - (4). Delay.
 - (5). Loss of profits.
- 417. — Questions of law and fact.
- 418. — Instructions.
- 419. — Verdicts and findings.

XI. RIGHTS AND REMEDIES OF THIRD PARTIES.

- 430. In general.
- 431. Constitutional and statutory provisions.
- 432. Subcontractors, laborers, and materialmen; liens.
- 433. — In general.

316H. PUBLIC CONTRACTS**XI. RIGHTS AND REMEDIES OF
THIRD PARTIES.(Cont'd)**

- 434. — Lien or rights as to money due principal contractor.
- 435. — Perfection of lien.
- 436. — Payments to contractors; trust funds.
- 437. — Effect of contractor's assignment of contract; priorities.
- 438. — Assignment of lien or claim.
- 439. — Miscellaneous persons and claims protected.
- 440. — Notice or claim in general.
- 441. — Time for notice or claim.
- 442. — Discharge or extinguishment.
- 443. — Proceedings for enforcement.
- 444. Rights and remedies of assignees.
- 445. Rights and remedies of other third parties.

**XII. RIGHTS AND REMEDIES OF
GOVERNMENT ENTITY.**

- 450. In general.
- 451. Constitutional and statutory provisions.
- 452. Breach by contractor, rights and remedies on.
- 453. Liability for cost of completion by another.
- 454. Proceedings.
- 455. — In general.
- 456. — Evidence.
- 457. — Damages and amount of recovery.
- 458. Kickbacks.

XIII. CRIMES AND PROSECUTIONS.

- 460. In general.

316P. PUBLIC EMPLOYMENT**SUBJECTS INCLUDED**

Persons employed by the government, particularly those persons who are within the scope of civil service or merit system laws and requirements

Operation of such laws and requirements, and of the agencies, boards, and commissions that administer them

Persons holding or occupying public office or otherwise exercising public functions and trusts in the service of the government

Nature and kinds of such employment or office

Creation and abolition of positions and offices

Hiring of public employees, selection of public officials, and the eligibility and qualification of such employees and officials

Duration of employment, term and tenure of public officials, and vacancies in office

Rights of public employees and officials, particularly in regard to employment practices

Proceedings concerning such rights, particularly those conducted by civil service or merit system agencies, boards, and commissions

Authority, powers, duties, and liabilities of public employees and officials

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Attorneys, see ATTORNEY AND CLIENT, ATTORNEY GENERAL, and DISTRICT AND PROSECUTING ATTORNEYS

Bribery, see BRIBERY

Discrimination in employment, see CIVIL RIGHTS

Elections, see ELECTION LAW

Estoppel against public employees and officials, see ESTOPPEL

Extortion, see EXTORTION

Judicial employees and officials, and other employees and officials attached to courts, see COURTS, JUDGES, CLERKS OF COURTS, and other specific topics

Labor relations, see LABOR AND EMPLOYMENT XII

Liabilities for violations of civil or constitutional rights, see CIVIL RIGHTS and UNITED STATES V(D)2

Lobbying, restrictions on employment in, see LOBBYING 5

Military members and officers, see ARMED SERVICES, MILITIA, and WAR AND NATIONAL EMERGENCY

Political activity by public employees, see ELECTION LAW 145

316P. PUBLIC EMPLOYMENT

Prisoners and inmates, labor and employment of, see PRISONS II(C), ¶360

Private employment, see LABOR AND EMPLOYMENT

Proceedings against public employees and officials for—

Declaratory relief, see DECLARATORY JUDGMENT

Injunctive relief, see INJUNCTION

Mandamus, see MANDAMUS

Prohibition, see PROHIBITION

Quo warranto, see QUO WARRANTO

Security clearances, see WAR AND NATIONAL EMERGENCY ¶1134

Tribal government employees and officials, see INDIANS

Unions and collective bargaining, see LABOR AND EMPLOYMENT XII

Wages and hours regulation, see LABOR AND EMPLOYMENT XIII

For employees and officials of particular governments, see also COUNTIES, DISTRICT OF COLUMBIA, MUNICIPAL CORPORATIONS, STATES, TERRITORIES, TOWNS, and UNITED STATES

For employees and officials devoted to particular fields of government activity and regulation, see also the topics and Key Numbers concerning those fields, including the following—

Agriculture, see also AGRICULTURE ¶2, 3.3(3)

Aviation, see also AVIATION ¶31, 223

Banking, see also FINANCE, BANKING, AND CREDIT ¶224

Bridges, see also BRIDGES ¶13.1, 38

Carriers, see also CARRIERS ¶10

Census, see also CENSUS ¶3

Children, see also INFANTS ¶1401, 1425, 1790, 3124

Civilian employees of the military, see also ARMED SERVICES ¶27 and MILITIA ¶12

Coroners and medical examiners, see also CORONERS

Diplomatic and consular affairs, see also AMBASSADORS AND CONSULS

Education, see also EDUCATION

Elections, see also ELECTION LAW

Gambling, see also GAMING AND LOTTERIES ¶302

Health, see also HEALTH

Hunting and fishing, see also FISH ¶11 and GAME ¶6

Immigration, see also ALIENS, IMMIGRATION, AND CITIZENSHIP ¶144

Inspection, see also INSPECTION ¶4

Insurance, see also INSURANCE

Licensing, see also LICENSES ¶21

Maritime pilots, see also PILOTS ¶4

Marriage licensing, see also MARRIAGE ¶25

Motor vehicles, see also AUTOMOBILES ¶38, 63, 80

Native peoples, see also INDIANS

Notaries public, see also NOTARIES

Parole, see also PARDON AND PAROLE ¶55

Postal matters, see also POSTAL SERVICE ¶5, 7–11

Prisons, see also PRISONS V

Public assistance, see also PUBLIC ASSISTANCE ¶19, 95, 214

Public lands, see also PUBLIC LANDS

Public utilities, see also PUBLIC UTILITIES III(A)

Publication of judicial decisions, see also REPORTS ¶3

Registers of deeds, see also REGISTERS OF DEEDS

Roads and highways, see also HIGHWAYS

Seamen, see also SEAMEN ¶5

Securities, see also SECURITIES REGULATION ¶81, 270

Sheriffs and constables, see also SHERIFFS AND CONSTABLES

Tax collection, see also CUSTOMS DUTIES, EDUCATION ¶306, INTERNAL REVENUE, and TAXATION

Trade, see also ANTITRUST AND TRADE REGULATION ¶301, 326, 336

Unemployment compensation, see also UNEMPLOYMENT COMPENSATION VII

United States Marshals, see also UNITED STATES MARSHALS

Veterans' affairs, see also ARMED SERVICES ¶102

316P. PUBLIC EMPLOYMENT

- Water, see also WATER LAW
- Woods and forests, see also WOODS AND FORESTS ¶7
- Workers' compensation, see also WORKERS' COMPENSATION XII
- Zoning and planning, see also ZONING AND PLANNING ¶1325
-
- I. IN GENERAL, ¶1-20.
- II. CIVIL SERVICE ACTS, REQUIREMENTS, AND SYSTEMS IN GENERAL, ¶21-40.
- III. ADMINISTRATIVE AGENCIES, BOARDS, AND COMMISSIONS, ¶41-60.
- IV. CREATION OF RELATIONSHIP; ELECTION, APPOINTMENT, AND HIRING, ¶61-140.
- (A) IN GENERAL, ¶61-80.
- (B) GROUNDS FOR AND PROPRIETY OF SELECTION; ELIGIBILITY AND QUALIFICATION, ¶81-140.
- V. DURATION OF RELATIONSHIP, ¶141-220.
- (A) IN GENERAL; TERM AND TENURE, ¶141-170.
- (B) VACANCY, ¶171-190.
- (C) TENURE OF TEACHERS AND EDUCATION PROFESSIONALS; CONTINUING CONTRACT STATUS, ¶191-220.
- VI. RIGHTS, INTERESTS, AND PRIVILEGES IN GENERAL, ¶221-236.
- VII. EMPLOYMENT PRACTICES, ¶237-430.
- (A) IN GENERAL, ¶237-250.
- (B) DISCHARGE, SUSPENSION, AND OTHER ADVERSE ACTION, ¶251-310.
- (C) LAYOFFS, FURLOUGHS, AND REDUCTIONS IN FORCE, ¶311-320.
- (D) PROMOTION, DEMOTION, ASSIGNMENT, AND TRANSFER, ¶321-340.
- (E) CONSTRUCTIVE ADVERSE ACTION, ¶341-350.
- (F) COMPENSATION IN GENERAL, ¶351-370.
- (G) COMPENSATION DURING ABSENCE; TIME OFF AND LEAVE, ¶371-380.
- (H) PENSIONS AND BENEFITS, ¶381-420.
- VII. EMPLOYMENT PRACTICES—Cont'd
- (I) REEMPLOYMENT, REINSTATEMENT, AND BACK PAY, ¶421-430.
- VIII. PROCEEDINGS, ¶431-840.
- (A) IN GENERAL, ¶431-450.
- (B) PROCEDURAL REQUIREMENTS AND PROTECTIONS IN GENERAL, ¶451-480.
- (C) REVIEW BY ADMINISTRATIVE AGENCIES, BOARDS, AND COMMISSIONS; CIVIL SERVICE AND MERIT SYSTEM PROCEEDINGS, ¶481-750.
1. IN GENERAL, ¶481-550.
2. FURTHER ADMINISTRATIVE REVIEW, ¶551-580.
3. EVIDENCE, ¶581-630.
4. RELIEF, ¶631-650.
5. COSTS AND FEES, ¶651-680.
6. COMPLIANCE AND ENFORCEMENT, ¶681-710.
7. SETTLEMENT, ¶711-740.
8. CONCLUSIVENESS AND EFFECT OF ADMINISTRATIVE DECISIONS; RES JUDICATA AND COLLATERAL ESTOPPEL, ¶741-750.
- (D) JUDICIAL REVIEW OR INTERVENTION, ¶751-790.
- (E) ACTIONS, ¶791-820.
- (F) JUDICIAL PROCEEDINGS FOR REMOVAL OR OUSTER, ¶821-840.
- IX. AUTHORITY AND POWERS, ¶841-860.
- X. DUTIES, ¶861-890.
- XI. LIABILITIES, ¶891-1020.
- (A) IN GENERAL, ¶891-910.
- (B) PARTICULAR CASES AND CONTEXTS, ¶911-950.
1. IN GENERAL, ¶911-930.
2. PRIVILEGE OR IMMUNITY; GOOD FAITH, ¶931-950.
- (C) EXISTENCE AND EXCLUSIVITY OF OTHER REMEDIES, ¶951-960.
- (D) PERSONS LIABLE, ¶961-980.
- (E) ACTIONS, ¶981-1020.
- XII. LIABILITIES ON OFFICIAL BONDS, ¶1021-1050.
- XIII. CRIMINAL RESPONSIBILITY, ¶1051-1080.
- XIV. TEMPORARY, SEASONAL, OR PROVISIONAL EMPLOYMENT, ¶1081-1110.
- XV. EMPLOYMENT OF ADMINISTRATIVE LAW JUDGES, ¶1111-1134.

316P. PUBLIC EMPLOYMENT**I. IN GENERAL.**

1. In general.
2. Constitutional and statutory provisions in general.
3. Nature and existence of public employment; definitions.
4. — In general.
5. — Public office, officers, and officials.
6. — Deputies and assistants.
7. — Who is employer; multiple entities or agencies.
8. Creation and abolition of position or office.
9. — In general.
10. — Reorganization.
11. — Contracts for services; privatization.

II. CIVIL SERVICE ACTS, REQUIREMENTS, AND SYSTEMS IN GENERAL.

21. In general.
22. Purpose and construction in general.
23. Exclusivity in general.
24. Entities affected.
25. Positions, offices, and employees affected; classification.
26. — In general.
27. — Particular cases and contexts in general.
28. — Reclassification.
29. — Unclassified service; declassification.
30. — Priority and seniority in general.
31. — Movement between positions; fall-back rights.
32. — Full-time or part-time employment.
33. Creation and abolition of position or office.
34. — In general.
35. — Reorganization.
36. — Contracts for services; privatization.

III. ADMINISTRATIVE AGENCIES, BOARDS, AND COMMISSIONS.

41. In general.
42. Powers and proceedings in general.
43. Relation to other agencies, boards, and commissions.
44. Number requisite to action; quorum.
45. Rules of decision; stare decisis.
46. — In general.

III. ADMINISTRATIVE AGENCIES, BOARDS, AND COMMISSIONS.(Cont'd)

47. — Judicial decisions.
48. — Administrative decisions.
49. — Arbitration decisions.
50. Investigations.
51. Rules, regulations, and other policymaking.
52. — In general.
53. — Administrative review.
54. — Judicial review or intervention.
55. Administrative construction of statutes.
56. Employees and officials of administrative agencies, boards, and commissions.
57. — In general.
58. — Members and officers.

IV. CREATION OF RELATIONSHIP; ELECTION, APPOINTMENT, AND HIRING.**(A) IN GENERAL.**

61. In general.
62. Authority to select.
63. — In general.
64. — Selection of officers.
65. — Selection by officers.
66. Manner and mode of selection.
67. — In general.
68. — Officers in general.
69. — Election or appointment.
70. — Multiple decisionmakers; confirmation or other approval.
71. — Revocation, rescission, or reconsideration.
72. Time for making selection.

(B) GROUNDS FOR AND PROPRIETY OF SELECTION; ELIGIBILITY AND QUALIFICATION.

81. In general.
82. Merit in general.
83. Particular cases and contexts in general.
84. Public office in general.
85. — In general.
86. — Elective office.
87. Education, experience, and skills.
88. Licensure or certification.
89. Examination.
90. — In general.
91. — Competitive or noncompetitive.

316P. PUBLIC EMPLOYMENT**IV. CREATION OF RELATIONSHIP;
ELECTION, APPOINTMENT,
AND HIRING.(Cont'd)**

- 92. — Rating and grading.
- 93. Eligibility lists.
- 94. — In general.
- 95. — Priority and ranking.
- 96. Prohibited practices and discrimination in general.
- 97. Preferences.
- 98. — In general.
- 99. — Veterans' preferences.
- 100. — Indian preferences.
- 101. Race.
- 102. Age.
- 103. Sex.
- 104. Sexual orientation or identity.
- 105. Marital, parental, or familial status.
- 106. Disability.
- 107. Religion.
- 108. Political beliefs or affiliation.
- 109. Alienage.
- 110. Citizenship.
- 111. Residence or domicile.
- 112. Language and literacy.
- 113. Property and payment of taxes.
- 114. Bias or interest.
- 115. — In general.
- 116. — Familial relationship; nepotism.
- 117. — Financial or pecuniary interest.
 - (1). In general.
 - (2). Disclosure.
- 118. — Membership in body making appointment.
- 119. Holding other office or employment; incompatibility.
- 120. — In general.
- 121. — Local-local conflicts.
- 122. — Local-state conflicts.
- 123. — State-state conflicts.
- 124. — State-federal and local-federal conflicts.
- 125. — Federal-federal conflicts.
- 126. — Judicial office or employment, conflicts involving.
- 127. — Legislative office or employment, conflicts involving.
- 128. — Resignation or other removal of conflict.
- 129. Commission or conviction of crime.

**IV. CREATION OF RELATIONSHIP;
ELECTION, APPOINTMENT,
AND HIRING.(Cont'd)**

- 130. Formal requirements; qualification.
- 131. — In general.
- 132. — Oath.
- 133. — Bond.
- 134. — Commission.
- 135. Evidence in general.

V. DURATION OF RELATIONSHIP.**(A) IN GENERAL; TERM AND TENURE.**

- 141. In general.
- 142. Indefinite term; employment at-will.
- 143. Definite or fixed term.
- 144. — In general.
- 145. — Commencement, computation, and expiration of term.
- 146. — Continuation in position or office after expiration of term; holding over.
- 147. Change of term.
- 148. Term limits.
- 149. Voluntary or agreed termination.
- 150. — In general.
- 151. — Resignation.
- 152. — Absence or abandonment.
- 153. — Constructive resignation.
- 154. Retirement.
- 155. — In general.
- 156. — Mandatory retirement.
- 157. Death, disability, or incapacitation.
- 158. Disqualification and forfeiture.
- 159. Impeachment or address.
- 160. Recall.
- 161. — In general.
- 162. — Persons subject.
- 163. — Grounds.
- 164. — Petition or other application.
- 165. — Conduct of election.
- 166. — Proceedings to challenge or review.

(B) VACANCY.

- 171. In general.
- 172. Occurrence and existence; what creates or constitutes vacancy.
- 173. — In general.
- 174. — Resignation, abandonment, or removal.

316P. PUBLIC EMPLOYMENT**V. DURATION OF RELATIONSHIP.(Cont'd)**

- 175. — Death, disability, or incapacitation.
- 176. — Temporary absence or incapacitation.
- 177. — Ineligibility or disqualification.
 - (1). In general.
 - (2). Defects as to oath, bond, or other formal requirements.
- 178. — Acceptance of other position or office.
- 179. — Newly created position or office, vacancy as to.
- 180. Authority to fill vacancy.
- 181. Manner and mode of filling vacancy.
- 182. — In general.
- 183. — Election or appointment.
- 184. Term of person filling vacancy.

(C) TENURE OF TEACHERS AND EDUCATION PROFESSIONALS; CONTINUING CONTRACT STATUS.

- 191. In general.
- 192. Constitutional and statutory provisions.
- 193. — In general.
- 194. — Purpose of statutes.
- 195. — Construction and operation in general.
- 196. Persons entitled.
- 197. Substitute teachers.
- 198. Length of service and probation.
- 199. — In general.
- 200. — Calculation of probationary period.
- 201. — Tenure by estoppel.
- 202. Schools affected.
- 203. Effect of attaining tenure.
- 204. Retention or waiver of rights.
- 205. Abrogation or modification of rights.
- 206. Proceedings and review.

VI. RIGHTS, INTERESTS, AND PRIVILEGES IN GENERAL.

- 221. In general.
- 222. Property rights and interests.
- 223. Contracts; rights and interests therein.
- 224. — In general.
- 225. — Making, requisites, and validity.
- 226. — Construction and operation.
- 227. — Performance or breach.
- 228. Good faith and fair dealing.
- 229. Right or title to position or office.

VI. RIGHTS, INTERESTS, AND PRIVILEGES IN GENERAL.(Cont'd)

- 230. — In general.
- 231. — De jure officers or employees.
- 232. — De facto officers or employees.
 - (1). In general.
 - (2). Compensation.
 - (3). Authority, powers, duties, and liabilities.
 - (4). Liability for compensation and fees received.
- 233. — Usurpers and intruders.
- 234. — Collateral inquiry or attack.
- 235. — Evidence in general.
- 236. Relinquishment or limitation of rights.

VII. EMPLOYMENT PRACTICES.**(A) IN GENERAL.**

- 237. In general.
- 238. Direction, control, and regulation by employer in general.
- 239. Duties of employer in general.
- 240. Education and training.
- 241. Privacy; searches.
- 242. — In general.
- 243. — Alcohol and drug testing.
- 244. Records; personnel files.
- 245. — In general.
- 246. — Right to examine.

(B) DISCHARGE, SUSPENSION, AND OTHER ADVERSE ACTION.

- 251. In general.
- 252. Removal, separation, termination, and discharge in general.
- 253. Suspension or other discipline in general.
- 254. Authority to impose adverse action; manner and mode of imposition.
- 255. Grounds for and propriety of adverse action.
- 256. — In general.
- 257. — Cause in general.
- 258. — Prohibited or improper grounds in general.
 - (1). In general.
 - (2). Discrimination in general.
 - (3). Political beliefs or affiliation.
- 259. — Conduct or misconduct in general.
 - (1). In general.

316P. PUBLIC EMPLOYMENT**VII. EMPLOYMENT PRACTICES.(Cont'd)**

- (2). During prior term or employment.
- 260. — Off-duty conduct in general.
 - 261. — Suitability in general.
 - 262. — Competence or performance in general.
 - 263. — Performance standards, systems, and plans.
 - 264. — Eligibility and qualifications.
 - 265. — Disobedience or insubordination.
 - 266. — Attendance.
 - 267. — Strike or work stoppage.
 - 268. — Bias or conflict of interest.
 - 269. — Fraud, deception, or lack of candor.
 - 270. — Destruction, misuse, or unauthorized possession of government property.
 - 271. — Theft or embezzlement.
 - 272. — Alcohol or drug use.
 - 273. — Tobacco use.
 - 274. — Economic or financial problems of employee.
 - 275. — Discriminatory or retaliatory conduct in general.
 - 276. — Violent, dangerous, abusive, or harassing conduct.
 - 277. — Sexual conduct.
 - 278. — National security concerns.
 - 279. — Criminal charges, convictions, or history.
 - 280. Exercise of rights; retaliation.
 - 281. — In general.
 - 282. — Protected activities.
 - 283. — Motive and intent; pretext.
 - 284. — Causal connection; temporal proximity.
 - 285. Reporting or opposing wrongdoing; whistleblowing.
 - 286. — In general.
 - 287. — Protected activities.
 - 288. — Motive and intent; pretext.
 - 289. — Causal connection; temporal proximity.
 - 290. Refusal to engage in wrongdoing.
 - 291. — In general.
 - 292. — Protected activities.
 - 293. — Motive and intent; pretext.
 - 294. — Causal connection; temporal proximity.

VII. EMPLOYMENT PRACTICES.(Cont'd)

- 295. Nature, extent, and severity of sanction or penalty imposed.
- 296. — In general.
- 297. — Particular cases in general.
- 298. — Aggravation and mitigation.
- 299. — Disparate treatment.
- 300. — Past record; prior discipline.
- 301. Definiteness of sanction or penalty imposed.
- 302. — In general.
- 303. — Indefinite suspension.
- 304. Progressive discipline.
- 305. Suspension pending investigation or resolution of charges.
- 306. Priority and seniority.
- 307. Veterans' preferences.

(C) LAYOFFS, FURLOUGHS, AND REDUCTIONS IN FORCE.

- 311. In general.
- 312. Grounds for and propriety of imposition.
- 313. — In general.
- 314. — Economic, budgetary, or efficiency concerns.
- 315. — Reclassification of position.
- 316. — Abolition of position; reorganization or privatization.
- 317. Priority and seniority.
- 318. Veterans' preferences.

(D) PROMOTION, DEMOTION, ASSIGNMENT, AND TRANSFER.

- 321. In general.
- 322. Authority to implement or impose.
- 323. Assignment of work or duties in general.
- 324. Additional duties; out-of-title work.
- 325. Reassignment; transfer.
- 326. — In general.
- 327. — Layoff, furlough, or reduction in force.
- 328. Reduction in grade or rank; demotion.
- 329. Promotion.
- 330. — In general.
- 331. — Cancellation of promotion.
- 332. Priority and seniority.
- 333. Veterans' preferences.

(E) CONSTRUCTIVE ADVERSE ACTION.

- 341. In general.

316P. PUBLIC EMPLOYMENT**VII. EMPLOYMENT PRACTICES.(Cont'd)**

- 342. Constructive removal, separation, termination, or discharge.
- 343. Constructive suspension or other discipline.
- 344. Constructive demotion.

(F) COMPENSATION IN GENERAL.

- 351. In general.
- 352. Authority to regulate.
- 353. Form, rate, and amount in general.
- 354. Salaries.
- 355. Commissions and fees.
- 356. — In general.
- 357. — Particular duties, services, or activities.
- 358. Additional compensation; extra services.
- 359. Overtime compensation.
- 360. Increase or reduction.
- 361. — In general.
- 362. — Officers.
- 363. Severance pay and benefits.
- 364. Reimbursement of expenses; indemnification.
- 365. — In general.
- 366. — Travel expenses, mileage, and per diem.
- 367. — Litigation expenses.
- 368. Deductions and offsets.
- 369. Payment and collection.
- 370. Recovery back of payments; overpayment.

**(G) COMPENSATION DURING ABSENCE;
TIME OFF AND LEAVE.**

- 371. In general.
- 372. Vacation and holidays.
- 373. Medical leave and sick time.
- 374. Pregnancy, maternity, and parental leave.
- 375. Sabbatical.

(H) PENSIONS AND BENEFITS.

- 381. In general.
- 382. Authority to regulate.
- 383. Eligibility and right to benefits.
- 384. — In general.
- 385. — Pensions and retirement benefits in general.
- 386. — Early retirement.

VII. EMPLOYMENT PRACTICES.(Cont'd)

- 387. — Deferred compensation.
- 388. — Health and medical benefits.
 - (1). In general.
 - (2). Pensioners and retirees.
- 389. — Disability benefits.
 - (1). In general.
 - (2). Disability pensions and disability retirement in general.
 - (3). Particular conditions or impairments.
 - (4). — In general.
 - (5). — Mental and psychological conditions or impairments.
 - (6). — Alcohol and drugs; substance abuse.
 - (7). — Situational or environmental considerations.
 - (8). — Multiple conditions or impairments; cumulative effect.
 - (9). Accommodation.
 - (10). — In general.
 - (11). — Reassignment.
- 390. — Death and survivors' benefits.
- 391. Funds and contributions.
- 392. — In general.
- 393. — Withdrawals, refunds, and deposits.
- 394. Amount and computation.
- 395. — In general.
- 396. — Pensions and retirement benefits in general.
- 397. — Disability benefits.
- 398. — Death and survivors' benefits.
- 399. Service credit.
- 400. — In general.
- 401. — Military service.
- 402. Enhanced or special benefits for particular employment categories.
- 403. — In general.
- 404. — Law enforcement personnel.
- 405. — Firefighters.
- 406. Payment and apportionment.
- 407. Revocation, suspension, or termination of benefits.
- 408. — In general.
- 409. — Disability benefits.
- 410. — Reinstatement of benefits.

316P. PUBLIC EMPLOYMENT**VII. EMPLOYMENT PRACTICES.(Cont'd)**

- 411. Recovery back of payments; overpayment.
- 412. — In general.
- 413. — Factors precluding recovery; waiver of overpayment.

(I) REEMPLOYMENT, REINSTATEMENT, AND BACK PAY.

- 421. In general.
- 422. Following layoff, furlough, or reduction in force.
- 423. Following demotion, reassignment, or transfer.
- 424. Following injury or disability.
- 425. — In general.
- 426. — Partial recovery; limited or modified work.
- 427. Effect on pensions and benefits.

VIII. PROCEEDINGS.**(A) IN GENERAL.**

- 431. In general.
- 432. Exclusive, concurrent, and conflicting remedies.
- 433. — In general.
- 434. — Retaliation, whistleblowing, and discrimination.
- 435. Exhaustion of remedies.
- 436. — In general.
- 437. — Retaliation, whistleblowing, and discrimination.
- 438. Election of remedies.
- 439. — In general.
- 440. — Retaliation, whistleblowing, and discrimination.
- 441. Primary jurisdiction.

(B) PROCEDURAL REQUIREMENTS AND PROTECTIONS IN GENERAL.

- 451. In general.
- 452. Right to notice, opportunity to respond, and hearing in general.
- 453. — In general.
- 454. — Federal personnel in general.
- 455. — State, local, and other non-federal personnel in general.
- 456. — Law enforcement personnel.
- 457. Timeliness in general.

VIII. PROCEEDINGS.(Cont'd)

- 458. Requisites and sufficiency of notice, charge, or claim.
- 459. — In general.
- 460. — Particular matters.
 - (1). In general.
 - (2). Removal, separation, termination, and discharge.
 - (3). Suspension or other discipline.
 - (4). Layoffs, furloughs, and reductions in force.
 - (5). Promotion, demotion, assignment, and transfer.
 - (6). Compensation.
 - (7). Pensions and benefits.
- 461. — Variance from proof.
- 462. — Merging or splitting charges.
- 463. Application or other request for benefits.
- 464. — In general.
- 465. — Time for making.
- 466. — Government-initiated applications.
- 467. Grievances in general.
- 468. Defenses in general.
- 469. Requisites and sufficiency of hearing.
- 470. Bias or other disqualification of decisionmaker.
- 471. Counsel.
- 472. Ex parte communications.
- 473. Scope of inquiry.
- 474. Decision or determination.
- 475. Notice of right to appeal or seek review.

(C) REVIEW BY ADMINISTRATIVE AGENCIES, BOARDS, AND COMMISSIONS; CIVIL SERVICE AND MERIT SYSTEM PROCEEDINGS.**1. IN GENERAL.**

- 481. In general.
- 482. Nature and form of proceedings.
- 483. Jurisdiction in general.
- 484. Particular jurisdictional issues and reviewable matters.
- 485. — In general.
- 486. — Entities, positions, offices, and employees affected; classification.
- 487. — Creation of employment relationship; appointment and hiring.
- 488. — Adverse actions and prohibited practices in general.

316P. PUBLIC EMPLOYMENT**VIII. PROCEEDINGS.(Cont'd)**

- 489. — Removal, separation, termination, and discharge in general.
- 490. — Suspension or other discipline in general.
- 491. — Exercise of rights; retaliation.
- 492. — Reporting or opposing wrongdoing; whistleblowing.
- 493. — Retirement or resignation.
- 494. — Layoffs, furloughs, and reductions in force.
- 495. — Promotion, demotion, assignment, and transfer.
- 496. — Constructive adverse action.
- 497. — Compensation.
- 498. — Pensions and benefits.
 - (1). In general.
 - (2). Disability benefits.
 - (3). Death and survivors' benefits.
 - (4). Recovery back of payments; overpayment.
- 499. — Reemployment and reinstatement.
- 500. — Discrimination; "mixed cases".
- 501. — Matters covered by collective bargaining agreements in general.
- 502. — Grievance procedures and decisions.
- 503. — National security determinations.
- 504. Finality.
- 505. Prematurity; ripeness.
- 506. Mootness.
- 507. Persons entitled to seek review; parties; standing.
- 508. — In general.
- 509. — Bringing in new parties; joinder.
- 510. — Intervention.
- 511. — Substitution.
- 512. — Class actions.
- 513. Time for review.
- 514. — In general.
- 515. — Accrual, computation, and tolling.
- 516. — Excuses for delay; good cause.
 - (1). In general.
 - (2). Knowledge or notice.
 - (3). Incapacity.
 - (4). Reliance on representations; estoppel.
 - (5). Reliance on attorney or other representative.

VIII. PROCEEDINGS.(Cont'd)

- 517. Complaint, petition, or other application for review.
 - 518. Presentation and preservation of issues; record.
 - 519. Proceedings on review; hearing.
 - 520. — In general.
 - 521. — Assignment and role of administrative judge or other reviewing officer.
 - (1). In general.
 - (2). Providing notice or other assistance to litigants.
 - (3). Bias or other disqualification.
 - 522. — Necessity of hearing; requests.
 - 523. — Time for hearing.
 - 524. — Notice of hearing.
 - 525. — Venue.
 - 526. — Continuance or postponement.
 - 527. — Suspension or stay.
 - 528. — Consolidation or bifurcation.
 - 529. — Discovery.
 - 530. — Prehearing or status conference.
 - 531. — Counsel.
 - 532. — Ex parte communications.
 - 533. — Sanctions in general.
 - 534. — Dismissal in general.
 - 535. — Voluntary dismissal; withdrawal.
 - 536. — Failure to prosecute or defend.
 - 537. — Record.
 - 538. Scope of review.
 - 539. — In general.
 - 540. — Theory or grounds relied on below.
 - 541. — Standard of review.
 - 542. Harmless, prejudicial, and reversible error.
 - 543. Findings, conclusions, decision, and order.
 - 544. — In general.
 - 545. — Timeliness.
 - 546. Reopening and reconsideration.
 - 547. Proceedings on government-initiated applications for benefits.
- 2. FURTHER ADMINISTRATIVE REVIEW.**
- 551. In general.
 - 552. Decisions subject to further administrative review.
 - 553. — In general.

316P. PUBLIC EMPLOYMENT**VIII. PROCEEDINGS.**(Cont'd)

- 554. — Finality; interlocutory review.
- 555. — Prematurity; ripeness.
- 556. — Mootness.
- 557. Persons entitled to seek further administrative review; parties; standing.
- 558. Time for further administrative review.
- 559. — In general.
- 560. — Accrual, computation, and tolling.
- 561. — Excuses for delay; good cause.
 - (1). In general.
 - (2). Knowledge or notice.
 - (3). Incapacity.
 - (4). Reliance on representations; estoppel.
 - (5). Reliance on attorney or other representative.
- 562. Petition or other application for further administrative review.
- 563. Presentation and preservation of issues for further administrative review; record.
- 564. — In general.
- 565. — New or additional evidence.
 - (1). In general.
 - (2). Particular cases.
- 566. Proceedings on further administrative review; hearing.
- 567. Scope of further administrative review.
- 568. — In general.
- 569. — Theory or grounds relied on below.
- 570. — Standard of review.
 - (1). In general.
 - (2). Factual findings in general.
 - (3). Credibility and demeanor of witnesses.
- 571. Harmless, prejudicial, and reversible error on further administrative review.
- 572. — In general.
- 573. — Particular cases.
- 574. Determination and disposition on further administrative review.
- 575. — In general.
- 576. — Reversal.
- 577. — Remand.
 - (1). In general.
 - (2). Proceedings on remand.
- 578. Reopening and reconsideration of further administrative review.

3. EVIDENCE.

- 581. In general.
- 582. Official notice.
- 583. Admissibility in general.
- 584. Hearsay in general.
- 585. Admissions, declarations, and confessions.
- 586. Documentary and demonstrative evidence.
- 587. Stipulations.
- 588. Witnesses.
- 589. — In general.
- 590. — Subpoenas.
- 591. — Competency.
- 592. — Examination, credibility, and impeachment.
- 593. Expert and opinion evidence.
- 594. Privilege.
- 595. Presumptions and burden of proof.
- 596. — In general.
- 597. — Entities, positions, offices, and employees affected; classification.
- 598. — Creation of employment relationship; appointment and hiring.
- 599. — Adverse actions and prohibited practices in general.
- 600. — Removal, separation, termination, and discharge in general.
- 601. — Suspension or other discipline in general.
- 602. — Exercise of rights; retaliation.
- 603. — Reporting or opposing wrongdoing; whistleblowing.
- 604. — Retirement or resignation.
- 605. — Layoffs, furloughs, and reductions in force.
- 606. — Promotion, demotion, assignment, and transfer.
- 607. — Constructive adverse action.
- 608. — Compensation.
- 609. — Pensions and benefits.
 - (1). In general.
 - (2). Disability benefits.
 - (3). Death and survivors' benefits.
 - (4). Recovery back of payments; overpayment.
- 610. — Reemployment and reinstatement.
- 611. — Discrimination.
- 612. Weight and sufficiency.
- 613. — In general.

316P. PUBLIC EMPLOYMENT**VIII. PROCEEDINGS.(Cont'd)**

- 614. — Entities, positions, offices, and employees affected; classification.
- 615. — Creation and duration of employment relationship.
- 616. — Adverse actions and prohibited practices in general.
- 617. — Removal, separation, termination, and discharge in general.
- 618. — Suspension or other discipline in general.
- 619. — Exercise of rights; retaliation.
- 620. — Reporting or opposing wrongdoing; whistleblowing.
- 621. — Retirement or resignation.
- 622. — Layoffs, furloughs, and reductions in force.
- 623. — Promotion, demotion, assignment, and transfer.
- 624. — Constructive adverse action.
- 625. — Compensation.
- 626. — Pensions and benefits.
 - (1). In general.
 - (2). Disability benefits.
 - (3). — In general.
 - (4). — Medical evidence.
 - (5). — Subjective evidence.
 - (6). — Vocational evidence.
 - (7). Death and survivors' benefits.
 - (8). Recovery back of payments; overpayment.
- 627. — Reemployment and reinstatement.
- 628. — Discrimination.

4. RELIEF.

- 631. In general.
- 632. Restoration of status quo ante.
- 633. Monetary relief.
- 634. — In general.
- 635. — Lost income or benefits; back pay.
- 636. — Damages.
- 637. Preliminary, temporary, or interim relief.
- 638. Stay of adverse action pending investigation.
- 639. — In general.
- 640. — Extension of stay.
- 641. Proceedings concerning relief.
- 642. — In general.

VIII. PROCEEDINGS.(Cont'd)

- 643. — Further administrative review.
- 644. Evidence.

5. COSTS AND FEES.

- 651. In general.
- 652. Items, amount, and reasonableness in general.
- 653. Attorney fees.
- 654. — In general.
- 655. — Prevailing party.
- 656. — Existence of attorney-client relationship.
- 657. — Culpability of employer; interest of justice.
 - (1). In general.
 - (2). Prohibited personnel practices.
 - (3). Charges clearly without merit or wholly unfounded; substantial innocence.
 - (4). Bad faith.
 - (5). Gross procedural error.
 - (6). Agency knew or should have known of want of merit.
- 658. — Items, amount, and reasonableness.
 - (1). In general; lodestar.
 - (2). Hourly rate.
 - (3). Time spent.
 - (4). Adjustments.
 - (5). Degree of success.

- 659. — Contingency arrangements.
- 660. Costs and fees incurred on judicial review.
- 661. Proceedings concerning costs and fees.
- 662. — In general.
- 663. — Jurisdiction and powers.
- 664. — Time for proceedings.
- 665. — Hearing and determination.
- 666. — Further administrative review.
- 667. Evidence.
- 668. — In general.
- 669. — Presumptions and burden of proof.
- 670. — Weight and sufficiency.

6. COMPLIANCE AND ENFORCEMENT.

- 681. In general.
- 682. Acts constituting compliance with order.
- 683. — In general.

316P. PUBLIC EMPLOYMENT**VIII. PROCEEDINGS.(Cont'd)**

- 684. — Order restoring status quo ante.
- 685. — Monetary relief order.
- 686. — Interim relief order.
- 687. Proceedings concerning compliance and enforcement.
- 688. — In general.
- 689. — Jurisdiction and powers.
- 690. — Time for proceedings.
- 691. — Hearing and determination.
- 692. — Further administrative review.
- 693. Evidence.
- 694. — In general.
- 695. — Presumptions and burden of proof.
- 696. — Weight and sufficiency.
- 697. Effect of noncompliance; relief; sanctions.
- 698. — In general.
- 699. — Noncompliance with order of preliminary, temporary, or interim relief.
- 700. Stay of enforcement.

7. SETTLEMENT.

- 711. In general.
- 712. Requisites and validity.
- 713. Construction, operation, and effect.
- 714. — In general.
- 715. — Settlement as waiver of rights.
- 716. Modification or rescission.
- 717. Performance, breach, and enforcement.
- 718. Proceedings concerning settlement.
- 719. — In general.
- 720. — Jurisdiction and powers.
- 721. — Time for proceedings.
- 722. — Hearing and determination.
- 723. — Further administrative review.
- 724. Evidence.
- 725. — In general.
- 726. — Presumptions and burden of proof.
- 727. — Weight and sufficiency.
- 728. Effect of breach or noncompliance; relief; sanctions.
- 729. "Last chance" agreements.
- 730. "Clean record" agreements.

8. CONCLUSIVENESS AND EFFECT OF ADMINISTRATIVE DECISIONS; RES JUDICATA AND COLLATERAL ESTOPPEL.

- 741. In general.
- 742. Law of the case.

(D) JUDICIAL REVIEW OR INTERVENTION.

- 751. In general.
- 752. Nature and form of proceedings.
- 753. Jurisdiction in general.
- 754. Decisions reviewable.
- 755. — In general.
- 756. — Finality; interlocutory review.
- 757. — Prematurity; ripeness.
- 758. — Mootness.
- 759. Persons entitled to seek review; parties; standing.
- 760. Time for review.
- 761. Petition or other application for review.
- 762. Presentation and preservation of issues for review; record.
- 763. Proceedings on review; hearing.
- 764. Scope of review.
- 765. — In general.
- 766. — Theory or grounds relied on below.
- 767. — Standard of review in general.
 - (1). In general.
 - (2). Questions of law and fact in general; findings and conclusions in general.
- 768. — Particular questions or matters.
 - (1). In general.
 - (2). Statutory and regulatory questions in general.
 - (3). Entities, positions, offices, and employees affected; classification.
 - (4). Creation of employment relationship; appointment and hiring.
 - (5). Employment practices; adverse action.
 - (6). — In general.
 - (7). — Nature, extent, and severity of sanction or penalty imposed.
 - (8). — Discrimination; "mixed cases".
 - (9). Compensation, pensions, and benefits.
 - (10). Procedural matters in general.
 - (11). Jurisdiction.
 - (12). Time limits.
 - (13). Evidence and discovery.
 - (14). — In general.
 - (15). — Weight and sufficiency of evidence; credibility.

316P. PUBLIC EMPLOYMENT**VIII. PROCEEDINGS.(Cont'd)**

- (16). — Substantial evidence.
- (17). Relief.
- (18). Costs and fees.
- (19). Compliance and enforcement.
- (20). Settlement.
- 769. Presumptions and burden of showing error.
- 770. Harmless, prejudicial, and reversible error.
- 771. Determination and disposition on review.
- 772. — In general.
- 773. — Reversal.
- 774. — Remand.
 - (1). In general.
 - (2). Proceedings on remand.
- 775. Reopening and reconsideration.
- 776. Further judicial review.
- 777. — In general.
- 778. — Scope of further judicial review.
- 779. — Harmless, prejudicial, and reversible error.
- 780. — Determination and disposition on further review.
- 781. — Reopening and reconsideration.

(E) ACTIONS.

- 791. In general.
- 792. Nature, form, and right of action.
- 793. Jurisdiction and venue.
- 794. Time for proceedings; limitations.
- 795. Parties; standing.
- 796. Process and appearance.
- 797. Pleading.
- 798. — In general.
- 799. — Exercise of rights; retaliation.
- 800. — Reporting or opposing wrongdoing; whistleblowing.
- 801. Evidence in general; admissibility.
- 802. Presumptions and burden of proof.
- 803. — In general.
- 804. — Exercise of rights; retaliation.
- 805. — Reporting or opposing wrongdoing; whistleblowing.
- 806. Weight and sufficiency of evidence.
- 807. — In general.
- 808. — Exercise of rights; retaliation.

VIII. PROCEEDINGS.(Cont'd)

- 809. — Reporting or opposing wrongdoing; whistleblowing.
- 810. Trial, judgment, and relief.
- 811. Costs and fees.

(F) JUDICIAL PROCEEDINGS FOR REMOVAL OR OUSTER.

- 821. In general.
- 822. Nature, form, and right of action.
- 823. Jurisdiction and venue.
- 824. Time for proceedings; limitations.
- 825. Parties; standing.
- 826. Process and appearance.
- 827. Pleading.
- 828. Evidence.
- 829. — In general; admissibility.
- 830. — Presumptions and burden of proof.
- 831. — Weight and sufficiency.
- 832. Trial, judgment, and relief.
- 833. Review.
- 834. Costs and fees.

IX. AUTHORITY AND POWERS.

- 841. In general.
- 842. Ultra vires acts in general.
- 843. Delegation in general.
- 844. Deputies and assistants.
- 845. Ministerial officers.
- 846. Agents and employees.
- 847. Special authority or employment.
- 848. Disabilities.
- 849. Actions by employees, officers, and agents.

X. DUTIES.

- 861. In general.
- 862. Language requirements.
- 863. Custody and care of public funds and other property.
- 864. Accounting, audit, and settlement.
- 865. Ethics and conflicts of interest in general.
- 866. Disclosure obligations.
- 867. Confidentiality.
- 868. Outside activities.
- 869. — In general.
- 870. — Prepublication review.

316P. PUBLIC EMPLOYMENT**X. DUTIES.(Cont'd)**

- 871. Education, training, licensure, and certification.
- 872. Former personnel; post-employment duties.
- 873. Ethics boards and commissions.
- 874. — In general.
- 875. — Proceedings.
- 876. — Judicial review or intervention.
- 877. Obstruction of or interference with performance of official duties.

XI. LIABILITIES.**(A) IN GENERAL.**

- 891. In general.
- 892. Officers, officials, and official acts in general.
- 893. Negligence or misconduct in general.
- 894. Ministerial acts or functions.
- 895. Discretionary acts or functions.
- 896. Privilege or immunity; good faith.
- 897. — In general; official immunity.
- 898. — Sovereign immunity, and relation of official immunity thereto.
- 899. — Absolute immunity.
- 900. — Qualified immunity.
- 901. — Discretionary function immunity.
- 902. — Judicial immunity.
- 903. — Legislative immunity.
- 904. — Prosecutorial immunity.

(B) PARTICULAR CASES AND CONTEXTS.**1. IN GENERAL.**

- 911. In general.
- 912. Federal personnel in general.
- 913. State, local, and other non-federal personnel in general.
- 914. Particular torts.
- 915. Defamation, disclosure, and privacy claims.
- 916. Law enforcement personnel.
- 917. Claims by fellow employees.

2. PRIVILEGE OR IMMUNITY; GOOD FAITH.

- 931. In general.
- 932. Federal personnel in general.
- 933. State, local, and other non-federal personnel in general.
- 934. Particular torts.

XI. LIABILITIES.(Cont'd)

- 935. Defamation, disclosure, and privacy claims.
- 936. Law enforcement personnel.
- 937. Claims by fellow employees.

(C) EXISTENCE AND EXCLUSIVITY OF OTHER REMEDIES.

- 951. In general.
- 952. Tort claims acts.
- 953. Other particular remedies.
- 954. Exhaustion of remedies.

(D) PERSONS LIABLE.

- 961. In general.
- 962. Individual or official capacity.
- 963. — In general.
- 964. — Federal personnel in general.
- 965. — State, local, and other non-federal personnel in general.
- 966. — Law enforcement personnel.
- 967. — Claims by fellow employees.
- 968. Personal involvement; vicarious liability and respondeat superior.
- 969. — In general.
- 970. — Federal personnel in general.
- 971. — State, local, and other non-federal personnel in general.
- 972. — Law enforcement personnel.
- 973. — Claims by fellow employees.

(E) ACTIONS.

- 981. In general.
- 982. Nature, form, and right of action.
- 983. Conditions precedent.
- 984. Jurisdiction and venue.
- 985. Time to sue; limitations.
- 986. Parties; standing.
- 987. — In general.
- 988. — Substitution of parties in general.
- 989. — Substitution of government as defendant.
 - (1). In general.
 - (2). Federal personnel in general.
 - (3). State, local, and other non-federal personnel in general.
 - (4). Law enforcement personnel.
 - (5). Claims by fellow employees.
- 990. Process and appearance.
- 991. Pleading.

316P. PUBLIC EMPLOYMENT**XI. LIABILITIES.(Cont'd)**

- 992. — In general.
- 993. — Privilege or immunity in general.
- 994. — Federal personnel in general.
- 995. — State, local, and other non-federal personnel in general.
- 996. — Law enforcement personnel.
- 997. — Claims by fellow employees.
- 998. Evidence in general; admissibility.
- 999. Presumptions and burden of proof.
- 1000. — In general.
- 1001. — Privilege or immunity in general.
- 1002. — Federal personnel in general.
- 1003. — State, local, and other non-federal personnel in general.
- 1004. — Law enforcement personnel.
- 1005. — Claims by fellow employees.
- 1006. Weight and sufficiency of evidence.
- 1007. — In general.
- 1008. — Privilege or immunity in general.
- 1009. — Federal personnel in general.
- 1010. — State, local, and other non-federal personnel in general.
- 1011. — Law enforcement personnel.
- 1012. — Claims by fellow employees.
- 1013. Trial, judgment, and relief.
- 1014. Costs and fees.

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- 1021. In general; nature of liability.
- 1022. Rights and remedies of sureties; discharge.
- 1023. Acts constituting breach or fulfillment of bond; accrual of liability.
- 1024. Extent of liability.
- 1025. Conclusiveness of former adjudication.
- 1026. Lien and enforcement thereof.
- 1027. Summary remedies.
- 1028. Actions.
- 1029. — In general.
- 1030. — Nature, form, and right of action.
- 1031. — Conditions precedent.
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- 1033. — Jurisdiction and venue.
- 1034. — Time to sue and limitations.
- 1035. — Parties; standing.
- 1036. — Process and appearance.
- 1037. — Pleading.
- 1038. — Evidence.

XII. LIABILITIES ON OFFICIAL BONDS.(Cont'd)

- 1039. — Trial, judgment, and relief.
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XIII. CRIMINAL RESPONSIBILITY.

- 1051. In general.
- 1052. Offenses.
- 1053. — In general.
- 1054. — Law enforcement activities.
- 1055. — Sexual conduct.
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- 1060. Defenses.
- 1061. — In general.
- 1062. — Immunity.
- 1063. Indictment, information, presentment, or complaint.
- 1064. Evidence.
- 1065. — In general; admissibility.
- 1066. — Presumptions and burden of proof.
- 1067. — Weight and sufficiency.
- 1068. Trial.
- 1069. — In general.
- 1070. — Questions of law or fact.
- 1071. — Instructions.
- 1072. Sentence and punishment.

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- 1081. In general.
- 1082. Probationary or trial employment in general.
- 1083. Duration and computation of employment period.
- 1084. — In general.
- 1085. — Probationary or trial employment.
- 1086. Employment practices; adverse action.
- 1087. — In general.
- 1088. — Removal, separation, termination, and discharge in general.
- 1089. — Suspension or other discipline in general.
- 1090. — Exercise of rights; retaliation.

316P. PUBLIC EMPLOYMENT**XIV. TEMPORARY, SEASONAL, OR PROVISIONAL EMPLOYMENT.(Cont'd)**

- 1091. — Reporting or opposing wrongdoing; whistleblowing.
- 1092. — Layoffs, furloughs, and reductions in force.
- 1093. — Promotion, demotion, assignment, and transfer.
- 1094. — Constructive adverse action.
- 1095. — Compensation, pensions, and benefits.
- 1096. Proceedings.
- 1097. — In general.
- 1098. — Procedural requirements and protections in general.
- 1099. — Review by administrative agencies, boards, and commissions; civil service or merit system proceedings.
- 1100. — Judicial review or intervention.
- 1101. — Actions.
- 1102. Authority and powers.
- 1103. Duties and liabilities.
- 1104. — In general.
- 1105. — Immunity.
- 1106. Criminal responsibility.

XV. EMPLOYMENT OF ADMINISTRATIVE LAW JUDGES.

- 1111. In general.
- 1112. Creation and duration of employment relationship.
- 1113. Rights and privileges in general.
- 1114. Employment practices; adverse action.
- 1115. — In general.
- 1116. — Removal, separation, termination, and discharge in general.
- 1117. — Suspension or other discipline in general.
- 1118. — Exercise of rights; retaliation.
- 1119. — Reporting or opposing wrongdoing; whistleblowing.
- 1120. — Layoffs, furloughs, and reductions in force.
- 1121. — Promotion, demotion, assignment, and transfer.
- 1122. — Constructive adverse action.
- 1123. — Compensation, pensions, and benefits.
- 1124. Proceedings.
- 1125. — In general.

XV. EMPLOYMENT OF ADMINISTRATIVE LAW JUDGES.(Cont'd)

- 1126. — Procedural requirements and protections in general.
- 1127. — Review by administrative agencies, boards, and commissions; civil service or merit system proceedings.
- 1128. — Judicial review or intervention.
- 1129. — Actions.
- 1130. Authority and powers.
- 1131. Duties and liabilities.
- 1132. — In general.
- 1133. — Immunity.
- 1134. Criminal responsibility.

317. PUBLIC LANDS**SUBJECTS INCLUDED**

Lands forming part of the public domain

Regulations relating thereto

Grants thereof

Acquisition by private owners of title thereto or rights therein, under grants or statutory provisions

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Commons, see **COMMON LANDS**

Mines and minerals in public lands, see **MINES AND MINERALS**

Navigable waters, lands under, see **WATER LAW**

I. **GOVERNMENT OWNERSHIP**, ¶1–21.

II. **SURVEY AND DISPOSAL OF LANDS OF UNITED STATES**, ¶22–141.

(A) **SURVEYS**, ¶22–28.

(B) **ENTRIES, SALES, AND POSSESSORY RIGHTS**, ¶29–41.

(C) **DONATIONS AND BOUNTY LANDS**, ¶42–46.

(D) **RESERVATIONS TO UNITED STATES**, ¶47–50.

(E) **SCHOOL AND UNIVERSITY LANDS**, ¶51–57.

317. PUBLIC LANDS

II. SURVEY AND DISPOSAL OF LANDS OF UNITED STATES—Cont'd

- (F) SWAMP AND OVERFLOWED LANDS, ¶58–61.
 - (G) GRANTS TO STATES FOR INTERNAL IMPROVEMENTS, ¶62–66.
 - (H) GRANTS IN AID OF RAILROADS, ¶67–93.
 - (I) PROCEEDINGS IN LAND OFFICE, ¶94–109.
 - (J) PATENTS, ¶110–117.
 - (K) REMEDIES IN CASES OF FRAUD, MISTAKE, OR TRUST, ¶118–130.
 - (L) RELIEF OF BONA FIDE SETTLERS AND CLAIMANTS, ¶131–134.
 - (M) CONVEYANCES, CONTRACTS, AND EXEMPTIONS, ¶135–141.
- III. DISPOSAL OF LANDS OF THE STATES, ¶142–187.5.
- IV. COLONIAL AND PROPRIETARY GRANTS, ¶188–196.5.
- V. SPANISH, MEXICAN, FRENCH, AND RUSSIAN GRANTS, ¶197–224.5.
- VI. TITLES DERIVED FROM INDIANS, ¶225–229.

I. GOVERNMENT OWNERSHIP.

- 1. Origin and nature of title in general.
- 2. Cessions and treaties.
- 3. Extinguishment of Indian title.
- 4. What are lands of the United States.
- 5. What are lands of the states.
- 6. Constitutional and statutory provisions.
- 7. Governmental authority and control.
- 8. Trespasses in general.
- 9. Cutting and removing timber.
- 9.1. — In general.
- 10. — Statutory regulations.
- 11. — Illegal cutting or removal.
- 12. — Right to timber cut.
- 13. — Recovery of timber or damages.
- 14. — Penalties and forfeitures.
- 15. — Criminal prosecutions.
- 16. — Timber on state lands.
- 16.5. Sale of timber.
- 17. Pasturage and hay.
- 18. Crops.
- 19. Inclosure.
- 20. Improvements.
- 21. Offenses incident to disposal of public lands.

II. SURVEY AND DISPOSAL OF LANDS OF UNITED STATES.

(A) SURVEYS.

- 22. Surveyors general and deputy surveyors.
 - 23. Necessity of survey.
 - 24. Method and sufficiency.
 - 25. Operation and effect in general.
 - 26. Errors and omissions.
 - 27. Conflicting surveys.
 - 28. Resurveys.
- (B) ENTRIES, SALES, AND POSSESSORY RIGHTS.
- 29. Lands subject to entry.
 - 30. Persons capable to enter or acquire lands.
 - 31. Rights acquired by occupancy.
 - 32. Rights acquired by entry in general.
 - 33. Sales.
 - 34. Pre-emption.
 - 35. Homestead.
 - (1). In general.
 - (2). Entry and commutation.
 - (3). Residence on and cultivation of land entered.
 - (4). Death of homesteader.
 - (5). Rights acquired.
 - (6). Rights of wife in homestead entered by husband.
 - 36. Timber culture.
 - 37. Desert lands.
 - 38. Timber and stone lands.
 - 39. Town sites.
 - (1). In general.
 - (2). Lands included or subject to entry as town site.
 - (3). Entry and occupancy.
 - (4). Right and title acquired by entry or patent.
 - (5). Execution of trust in general.
 - (6). Survey, plat, and statement of claim.
 - (7). Persons entitled to benefit of entry.
 - (8). Adverse claims and conveyances.
 - 40. Abandonment or relinquishment of claim.
 - 41. Evidence.
- (C) DONATIONS AND BOUNTY LANDS.
- 42. Grants by Congress in general.
 - 43. New Madrid act.

317. PUBLIC LANDS**II. SURVEY AND DISPOSAL OF LANDS
OF UNITED STATES.(Cont'd)**

- 44. Oregon donation act.
- 45. Particular grants and donations.
- 46. Bounty land warrants.

(D) RESERVATIONS TO UNITED STATES.

- 47. Mode and effect in general.
- 48. Public grounds and buildings.
- 49. Parks, woods, and springs.
- 50. Military reservations.

(E) SCHOOL AND UNIVERSITY LANDS.

- 51. Effect of reservation and grant to state in general.
- 52. Lands included.
- 53. Indemnity and lieu lands.
- 54. Sale and conveyance by state.
 - (1). In general.
 - (2). Lands subject to sale and conditions precedent.
 - (3). Pre-emption and right to purchase.
 - (4). Petition, vote, or consent of inhabitants or public officers.
 - (5). Application of purchaser and contest thereof.
 - (6). Price and payment or recovery thereof.
 - (7). Default, forfeiture, and resale.
 - (8). Sale for taxes and right of purchaser.
 - (9). Patents.
 - (10). Title and rights of purchaser and adverse claims.
- 55. Leases by state.
- 56. Improvements.
- 57. Disposition of proceeds.

(F) SWAMP AND OVERFLOWED LANDS.

- 58. Construction and operation of grant to state in general.
- 59. Lands included in grant.
- 60. Survey, selection, and certification to state.
- 61. Sale and conveyance by state or county.
 - (1). In general.
 - (2). Survey, selection, and certification to state as prerequisite to sale.

**II. SURVEY AND DISPOSAL OF LANDS
OF UNITED STATES.(Cont'd)**

- (3). Appropriation to aid internal improvements.
- (4). Conveyance in aid of railroads.
- (5). Mode and validity of sale and right to purchase.
- (6). Application of purchaser and contest thereof.
- (7). Occupation and improvement.
- (8). Rights acquired.
- (9). Consideration.
- (10). Default and forfeiture.
- (11). Certificates, patents, or other conveyances.
- (12). Relief to purchaser or claimant.
- (13). Rescission or annulment.
- (14). Curative acts.
- (15). Disposition of proceeds.

**(G) GRANTS TO STATES FOR INTERNAL
IMPROVEMENTS.**

- 62. Construction and operation of grant in general.
- 63. Lands included in grant.
- 64. Grants in aid of particular improvements.
- 65. Improvements to which proceeds of lands may be applied.
- 66. Sale and conveyance by state.

(H) GRANTS IN AID OF RAILROADS.

- 67. Construction and operation of grant to state.
 - 67.1. — In general.
- 68. — Title and rights of state.
- 69. — Grant by state to railroad company.
- 70. Construction and operation of grant to railroad company in general.
- 71. Vesting of title in railroad company.
- 72. Sufficiency of location and adoption of line.
- 73. Lands included in grant.
- 74. Reservations and exceptions.
- 75. — In general.
- 76. — Indian reservations.
- 77. — Spanish or Mexican grants.
- 78. — Mineral lands.
- 79. — Lands entered for pre-emption or homestead.

317. PUBLIC LANDS

**II. SURVEY AND DISPOSAL OF LANDS
OF UNITED STATES.(Cont'd)**

- 80. Withdrawal of lands from public entry or sale.
- 81. Indemnity and lieu lands.
 - (1). In general.
 - (2). Vesting of title.
 - (3). Withdrawal from entry or sale.
- 82. Survey, selection, and certification of lands.
- 83. Transfer of and succession to right to lands.
- 84. Conditions of grant.
- 84.1. — In general.
- 85. — Construction and operation in general.
- 86. — Performance.
- 87. — Partial performance.
- 88. Forfeiture and revocation of grant.
 - (1). In general.
 - (2). Effect of forfeiture and disposition of lands forfeited.
- 89. Purchasers from company.
 - (1). In general.
 - (2). Cancellation of certification or patent after sale by company.
 - (2.1). — In general.
 - (3). — Persons entitled to relief in general.
 - (4). — Citizenship of purchaser.
- 90. Mortgages by company.
- 91. Conflicting grants.
- 92. Grant of right of way.
- 93. Grant of right to timber and other materials.

(I) PROCEEDINGS IN LAND OFFICE.

- 94. Land districts and land offices.
- 95. Registers and receivers.
- 96. Authority and duties of officers in general.
- 97. Mode and rules of procedure in general.
- 98. Making and record of entries, and proceedings thereon.
- 99. Duties and proceedings as to sales.
- 100. Duties and proceedings as to location of grants or warrants.
- 101. Suspension of entries.
- 102. Cancellation of entries, receipts, certificates, and warrants.

**II. SURVEY AND DISPOSAL OF LANDS
OF UNITED STATES.(Cont'd)**

- 103. Determination of adverse claims.
 - (1). In general.
 - (2). Occupancy pending determination.
 - (3). Rights acquired by contest.
 - (4). Jurisdiction of courts.
- 104. Appeals from decisions of register and receiver.
- 105. Conclusiveness and effect of decisions.
- 106. — In general.
 - (1). In general.
 - (2). Errors of law.
 - (3). Fraud, imposition, or mistake.
 - (4). Registers and receivers.
- 107. — Commissioner of General Land Office.
- 108. — Secretary of the Interior.
- 109. Actions and proceedings to set aside decisions.

(J) PATENTS.

- 110. Right to and necessity for patent in general.
- 111. Issuance.
- 112. Delivery, acceptance, and record.
- 113. Requisites and validity.
- 114. Construction and operation in general.
 - (1). In general.
 - (2). Relation back.
 - (3). Property included.
 - (4). Conditions and exceptions.
 - (5). Patent issued after death of settler.
 - (6). Presumptions as to issuance and validity.
- 115. Conclusiveness.
- 116. — In general.
- 117. — Collateral attack.

**(K) REMEDIES IN CASES OF FRAUD,
MISTAKE, OR TRUST.**

- 118. Cancellation of certification to state.
- 119. Cancellation of patent.
- 119.1. — In general.
- 120. — Suit by United States.
 - (.5). In general.
 - (1). Nature and form of remedy.

317. PUBLIC LANDS**II. SURVEY AND DISPOSAL OF LANDS
OF UNITED STATES.(Cont'd)**

- (2). Right of action and defenses in general.
 - (3). Mistake or error.
 - (4). Fraud or perjury.
 - (4.1). — In general.
 - (5). — Acquisition of mineral lands.
 - (6). — Acquisition of homestead lands.
 - (7). Conditions precedent.
 - (8). Jurisdiction.
 - (9). Time to sue, limitations, and laches.
- See also LIMITATION OF ACTIONS.*
- (10). Parties.
 - (11). Pleading.
 - (12). Issues, proof, and variance.
 - (13). Presumptions and burden of proof.
 - (14). Admissibility of evidence.
 - (15). Weight and sufficiency of evidence.
 - (15.1). — In general.
 - (16). — Fraud, perjury, or mistake in general.
 - (17). — Acquisition of mineral lands.
 - (18). — Acquisition of homestead lands.
 - (19). — Good faith of subsequent purchasers.
 - (20). Judgment or decree and relief awarded.
 - (21). Review.
 - (22). Operation and effect of cancellation.
- 121. — Suit by state.
 - 122. — Suit by third person.
 - 123. Recovery of price by United States.
 - 124. Relief to claimant of land.
 - 124.1. — In general.
 - 125. — Equitable relief in general.
 - 126. — On ground of fraud.
 - 127. — On ground of mistake.
 - 128. — Establishment of trust.
 - 129. — Quieting title.
 - 130. — Recovery of money paid.

**(L) RELIEF OF BONA FIDE SETTLERS
AND CLAIMANTS.**

- 131. Persons protected as bona fide settlers or occupying claimants.
- 132. Protection and relief in general.
- 133. Right to purchase land.
- 134. Compensation for improvements.

**(M) CONVEYANCES, CONTRACTS,
AND EXEMPTIONS.**

- 135. Assignments and transfers of rights in general.
 - (1). In general.
 - (2). Homestead right.
 - (3). Claims under town-site laws.
 - (4). Bounty and school lands.
 - (5). Form and requisites of transfer or assignment.
- 136. Mortgages.
- 137. Sale of improvements.
- 138. Bona fide purchasers.
- 139. Validity of contracts.
- 140. Exemption of lands from liability for debts.
- 141. Persons entitled to question validity.

III. DISPOSAL OF LANDS OF THE STATES.

- 142. In general.
- 142.1. Alabama.
- 142.2. Alaska.
- 142.5. Arizona.
- 143. Arkansas.
- 144. California.
 - (1). In general.
 - (2). Application or affidavit for purchase and survey.
 - (3). Contests and determination of right to acquire lands.
 - (4). Certificates and patents and forfeiture or cancellation thereof.
 - (5). Curative acts.
- 145. Colorado.
- 146. Connecticut.
- 147. Delaware.
- 147.5. Florida.
- 148. Georgia.
- 148.1. Hawaii.
- 148.5. Idaho.
- 149. Illinois.
- 150. Indiana.

317. PUBLIC LANDS

III. DISPOSAL OF LANDS OF
THE STATES.(Cont'd)

- 150.1. Iowa.
- 150.5. Kansas.
- 151. Kentucky.
 - (.5). In general.
 - (1). Nature and amount of land subject to appropriation.
 - (2). Rights of settlers and occupants.
 - (3). Designation or description of lands entered.
 - (4). Warrant and survey.
 - (5). Caveat.
 - (6). Patents.
 - (7). Conflicting entries, claims, or patents.
 - (8). Curative acts.
- 152. Louisiana.
- 153. Maine.
- 154. Maryland.
- 155. Massachusetts.
- 156. Michigan.
- 156.5. Minnesota.
- 157. Mississippi.
- 158. Missouri.
- 158.5. Montana.
- 159. Nebraska.
- 160. Nevada.
- 161. New Hampshire.
- 162. New Jersey.
- 162.5. New Mexico.
- 163. New York.
- 164. North Carolina.
- 164.5. North Dakota.
- 165. Ohio.
- 165.5. Oklahoma.
- 166. Oregon.
- 167. Pennsylvania.
- 168. Rhode Island.
- 169. South Carolina.
- 169.5. South Dakota.
- 170. Tennessee.
 - (.5). In general.
 - (1). Right of entry and nature and extent of land subject thereto.
 - (2). Entry, survey, and certification.
 - (3). Validity and effect of grant.
 - (4). Conflicting entries and grants.
- 171. Texas.

III. DISPOSAL OF LANDS OF
THE STATES.(Cont'd)

- 172. — In general.
- 172.1. — Rights acquired by occupancy.
- 172.2. — Power to regulate disposition in general.
- 172.3. — Right to purchase lands subject to sale.
- 172.4. — Conflicting claims of applicants to purchase.
- 172.5. — Payment by purchaser.
- 172.6. — Pre-emption and homestead.
- 172.7. — Headright claims; settlements and contracts under colonization laws.
- 172.8. — Abandonment, forfeiture or loss of claims or rights acquired.
- 172.9. — Lease.
- 172.10. — Donations and bounties, in general.
- 172.11. — Donations, grants or reservations in aid of railroads.
- 173. — School, university, and asylum lands.
 - (.5). In general.
 - (1). Reservation or appropriation of lands in general.
 - (2). Grants to counties.
 - (3). Sale in general.
 - (4). Classification, appraisalment, listing, and notice of sale.
 - (5). Right to purchase in general.
 - (6). Settlement on and occupancy of land.
 - (7). Preferential right to purchase.
 - (8). Lands subject to sale.
 - (8.1). — In general.
 - (9). — Leased lands.
 - (10). Application to purchase in general.
 - (11). Payment of price.
 - (12). Sale of detached and isolated lands.
 - (13). Purchase of additional land by actual settlers.
 - (14). Sale of land granted to counties.
 - (15). Sale of timber.
 - (16). Conflicting applications.
 - (16.1). Actions.
 - (16.2). — In general; jurisdiction.

317. PUBLIC LANDS**III. DISPOSAL OF LANDS OF
THE STATES.(Cont'd)**

- (16.3). — Limitations and laches.
- (16.4). — Parties.
- (17). — Pleading.
- (18). — Evidence.
- (19). — Judgment, trial and review.
- (20). Abandonment.
- (21). Forfeiture, cancellation, and re-sale.
- (21.1). — In general.
- (22). — Relief from forfeiture and reinstatement.
- (23). Curative acts.
- (24). Lease.
- (24.1). — In general.
- (25). — Registration.
- (26). — Use of demised premises.
- (27). — Cancellation and release.
- 174. — Land certificates.
- 175. — Location and survey.
 - (.5). In general.
 - (1). Lands subject to location.
 - (2). Requisites and validity in general.
 - (3). Time for location and survey.
 - (4). Location or survey under certificate owned jointly.
 - (5). Construction, operation, and effect.
 - (6). Errors, omissions, and curative acts.
 - (7). Conflicting locations and surveys and priorities.
- 176. — Grants, conveyances, or patents by state or county.
 - (.5). In general.
 - (1). Issuance, requisites, and validity.
 - (2). Construction, operation, and conclusiveness.
- 177. — Remedies in cases of fraud, mistake, or trust.
- 178. — Conveyances and contracts by grantees, patentees, or occupants.
 - (.5). In general.
 - (1). Assignments and transfers of title and rights in general.
 - (2). Transfers by purchasers of school lands.
 - (3). Sales or transfers of certificates and warrants.

**III. DISPOSAL OF LANDS OF
THE STATES.(Cont'd)**

- (4). Contracts and leases.
- 179. — Relief to bona fide settlers and claimants.
- 180. — Land officers and proceedings thereof.
- 181. Utah.
- 182. Vermont.
- 183. Virginia.
- 184. Washington.
- 184.5. — In general.
- 185. — Tide and shore lands.
 - (1). In general.
 - (2). Classification and appraisal.
 - (3). Sale.
 - (4). Lease.
 - (5). Review of proceedings of land officers.
 - (6). Disposition of proceeds.
 - (7). Land officers.
- 186. West Virginia.
- 187. Wisconsin.
- 187.5. Wyoming.

IV. COLONIAL AND PROPRIETARY GRANTS.

- 188. Colonial charters and grants from the crown.
- 189. Grants, concessions, and patents from colonial governments or proprietors.
- 189.1. — In general.
- 190. — Power to make.
- 191. — Mode of making, requisites, and validity.
- 192. — Construction and operation in general.
- 193. — Lands included.
- 194. — Use and disposal of lands by municipalities.
- 195. — Perfection and confirmation of title.
- 196. — Title and rights acquired.
- 196.5. — Evidence of grant.

**V. SPANISH, MEXICAN, FRENCH,
AND RUSSIAN GRANTS.**

- 197. Recognition and enforcement by United States in general.
- 198. Cessions and treaties.
- 199. Power to make in general.

317A. PUBLIC UTILITIES**V. SPANISH, MEXICAN, FRENCH, AND
RUSSIAN GRANTS.(Cont'd)**

- 200. Persons capable to acquire lands.
- 201. Proceedings to obtain in general.
- 202. Settlements and contracts under colonization laws.
- 203. Mode of making, requisites, and validity.
- 204. Construction and operation in general.
- 205. Parties entitled.
- 206. Lands included.
- 207. Performance of conditions.
- 208. Confirmation by government making grant.
- 209. Forfeiture, revocation, or abandonment of grant or claim to confirmation.
- 210. Record and evidence of grant.
- 211. Confirmation by act of Congress or state.
- 212. Powers of and proceedings in land office.
- 213. Determination of claims by courts in general.
- 214. Commissioners to determine and settle claims.
- 214.1. — In general.
- 215. — Creation and constitution of commission.
- 216. — Jurisdiction, powers, and functions.
- 217. — Presentation of claims.
- 218. — Proceedings and determination.
- 219. — Review by courts.
- 220. Court of Private Land Claims.
- 221. Location and survey on confirmation or precedent thereto.
- 222. Patent in confirmation of grant.
- 223. Title and rights acquired.
 - (.5). In general.
 - (1). By grant from former government.
 - (2). By confirmation or rejection of claim.
 - (2.1). — In general.
 - (3). — Claims of third persons and priorities.
 - (4). — Persons benefited and lands included.
 - (5). — Indemnity in case of sale or partial loss of title.
 - (6). Assertion and enforcement.
 - (7). Assignment and transfer.

**V. SPANISH, MEXICAN, FRENCH, AND
RUSSIAN GRANTS.(Cont'd)**

- 224. Claimant preferred as purchaser on rejection of claim.
- 224.5. Lands granted to cities, towns, pueblos, or other communities, or to their inhabitants.

VI. TITLES DERIVED FROM INDIANS.

- 225. Validity of grants.
- 226. Evidence to establish.
- 227. Construction and operation of grants.
- 228. Acquisition and perfection of title.
- 229. Title and rights acquired.

317A. PUBLIC UTILITIES**SUBJECTS INCLUDED**

Public utilities or public service corporations generally

Boards or commissions created to supervise public service corporations or public utilities

Qualification and tenure of members of such boards or commissions

Their rights, privileges, and duties in general

Their jurisdiction and powers in respect to public utilities generally

Proceedings before them in the exercise of such general powers

Review of their acts and orders in general by courts

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Administrative law generally, see ADMINISTRATIVE LAW AND PROCEDURE

Interstate Commerce Commission, and regulation by state or local boards as interference with interstate commerce, see COMMERCE

Particular classes of public service corporations, and proceedings before the commission relating to such peculiar matters, including review by courts, see CARRIERS, ELECTRICITY, GAS, MINES AND MIN-

317A. PUBLIC UTILITIES

ERALS, RAILROADS, TELECOMMUNICATIONS, and other specific topics

Particular matters relating to corporations generally, see **CORPORATIONS AND BUSINESS ORGANIZATIONS**

- I. IN GENERAL, ¶101-110.
- II. REGULATION, ¶111-140.
- III. PUBLIC SERVICE COMMISSIONS OR BOARDS, ¶141-210.
 - (A) IN GENERAL, ¶141-160.
 - (B) PROCEEDINGS BEFORE COMMISSIONS, ¶161-180.
 - (C) JUDICIAL REVIEW OR INTERVENTION, ¶181-210.
- IV. PUBLIC UTILITY HOLDING COMPANY SYSTEM REGULATION, ¶211-216.

I. IN GENERAL.

- 101. In general.
- 102. Constitutional and statutory provisions.
- 103. Public service companies in general.

II. REGULATION.

- 111. In general.
- 112. Entities subject to regulation.
- 113. Certificates, permits, and franchises.
- 114. Service and facilities.
- 115. Contracts.
- 116. Accounting systems.
- 117. Securities.
- 118. Transfer of property or franchises; consolidation.
- 119. Regulation of charges.
 - 119.1. — In general.
- 120. — Nature and extent in general.
- 121. — Service within municipalities; charges fixed by contract or ordinance.
- 122. — Mode of regulation.
- 123. — Reasonableness of charges in general.
- 124. — Value of property; rate base.
- 125. — Reproduction cost.
- 126. — Going value.
- 127. — Depreciation.
- 128. — Operating expenses.
- 129. — Rate of return.
- 130. — Temporary or emergency charges.

III. PUBLIC SERVICE COMMISSIONS OR BOARDS.**(A) IN GENERAL.**

- 141. Nature and status.
- 142. Appointment or election, and qualification and tenure.
- 143. Rights and privileges.
- 144. Compensation.
- 145. Powers and functions.
 - 145.1. — In general.
- 146. — Legislative and judicial powers and functions.
- 147. — Statutory basis and limitation.
- 148. Exclusive and concurrent powers.
- 149. Rules.
- 150. Meetings.

(B) PROCEEDINGS BEFORE COMMISSIONS.

- 161. In general.
- 162. Notice and appearance.
- 163. Parties.
- 164. Pleading.
- 165. Evidence.
- 166. Production and inspection of books and writings.
- 167. Hearing and rehearing.
- 168. Findings.
- 169. Orders.
 - 169.1. — In general.
- 170. — Collateral attack.
- 171. — Enforcement by commission in general.
- 172. — Contempt.

(C) JUDICIAL REVIEW OR INTERVENTION.

- 181. Jurisdiction of courts in advance of or pending proceedings before commission.
- 182. Enforcement or prevention of enforcement by courts of orders of commission.
- 183. — In general.
- 184. — Trial or hearing, and evidence.
- 185. — Presumptions in favor of order or findings of commission.
- 186. — Determination of cause, review and remand to commission.
- 187. Actions to set aside orders of commissions.
- 188. Appeal from orders of commission.

318. QUIETING TITLE**III. PUBLIC SERVICE COMMISSIONS
OR BOARDS.(Cont'd)**

- 189. — In general.
- 190. — Decisions reviewable.
- 191. — Right of review.
- 192. — Requisites and proceedings for transfer of cause.
- 193. — Record.
- 194. — Review and determination in general.
- 195. — Presumptions in favor of order or findings of commission.
- 196. — Remand of cause to commission.
- 197. Certiorari to review orders of commission.

**IV. PUBLIC UTILITY HOLDING COMPANY
SYSTEM REGULATION.**

- 211. In general.
- 212. Declaration as to status of systems.
- 213. Simplification of systems.
- 214. Solicitation of proxies.
- 215. Court review of administrative decisions.
- 216. Fees and expenses.

318. QUIETING TITLE**SUBJECTS INCLUDED**

Actions for determination of conflicting claims to real property or removal of clouds on title thereto, whether under the jurisdiction of courts of equity or under statutory provisions

Statutory actions to determine adverse claims to money or personal property

Nature and scope of the remedy in general

Grounds of such actions and defenses thereto

By and against whom and as to what property, rights, and claims they may be maintained

Procedure therein, incidental relief, judgments or decrees, and enforcement thereof

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

New trials as of right in statutory actions for determination of adverse claims, see **NEW TRIAL**

Trespass to try title, actions of, see **TRESPASS TO TRY TITLE**

I. RIGHT OF ACTION AND DEFENSES,

⌘1-26.

II. PROCEEDINGS AND RELIEF,

⌘27-54.

I. RIGHT OF ACTION AND DEFENSES.

- 1. Nature and scope of remedy.
- 2. Property subject of action.
- 3. Grounds for relief in equity in general.
- 4. Inadequacy of remedy at law.
- 5. Prevention of multiplicity of suits.
- 6. Adverse claim of title.
- 7. Cloud on title.
 - (1). In general.
 - (2). Deeds, mortgages, and other written instruments.
 - (3). Void instruments.
 - (4). Claims based on judicial proceedings and sales.
 - (5). Taxes and assessments.
 - (6). Claim of dower.
- 8. Prevention of threatened cloud on title.
- 9. Title of plaintiff.
- 10. — In general.
- 10.1. — Necessity of having title or interest.
- 10.2. — Sufficiency in general.
- 10.3. — Purchasers under contract.
- 10.4. — Rights founded on possession.
- 10.5. — Mortgagors and mortgagees.
- 11. — Establishment by action at law.
- 12. Possession of plaintiff.
 - (5). In general.
 - (1). Necessity.
 - (2). Remedy at law of plaintiff out of possession.
 - (3). Ground for equitable jurisdiction where plaintiff is out of possession.
 - (4). Equitable title of plaintiff.
 - (5). Waiver of objection to want of possession.
 - (6). Remaindermen and reversioners.
 - (7). Sufficiency of possession in general.
 - (8). Vacant and unoccupied lands.

318. QUIETING TITLE**I. RIGHT OF ACTION AND DEFENSES.(Cont'd)**

- (9). Peaceable and undisputed possession.
- (10). Possession by lessee or agent of plaintiff.
- 13. Possession of defendant.
- 14. Conditions precedent.
- 15. Defenses.
- 16. Persons entitled to relief.
- 17. Persons as against whom relief may be granted.
- 18. Statutory remedies for determination of adverse claims.
- 18.1. — In general.
- 19. — Nature and scope.
- 20. — Grounds in general.
- 21. — Adverse claim.
- 22. — Title of plaintiff.
- 23. — Possession of plaintiff in general.
- 24. — Vacant or unoccupied lands.
- 25. — Defenses.
- 26. Statutory remedies to compel bringing of action.

II. PROCEEDINGS AND RELIEF.

- 27. Form of remedy.
- 28. Jurisdiction and venue.
- 29. Limitations and laches.
See also LIMITATION OF ACTIONS.
- 30. Parties.
 - (1). In general.
 - (2). Proper parties.
 - (3). Necessary parties.
- 31. Process.
- 32. Injunction, receiver, and use of property pending proceedings.
- 33. Pleading.
- 33.1. — In general.
- 34. — Bill, complaint, or petition in general.
 - (1). In general.
 - (2). Allegations as to inadequacy of remedy at law.
 - (3). Allegations as to parties.
 - (4). Offer to do equity.
 - (5). Allegations as to cloud or adverse claim of defendant.
- 35. — Allegations as to title and possession.

II. PROCEEDINGS AND RELIEF.(Cont'd)

- (1). In general.
- (2). Title.
- (3). Possession.
- 36. — Description of property.
- 37. — Plea or answer.
 - (1). In general.
 - (2). Bond prerequisite to plea or answer.
- 38. — Disclaimer.
- 39. — Cross-bill, cross-complaint, or counterclaim, and plea or answer thereto.
- 40. — Replication or reply.
- 41. — Demurrer.
- 42. — Amended and supplemental pleadings.
- 43. — Issues, proof, and variance.
- 44. Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency in general.
 - (4). Sufficiency of evidence of title.
 - (5). Sufficiency of evidence of possession.
- 45. Dismissal before hearing.
- 46. Scope of inquiry and powers of court.
- 47. Trial or hearing.
 - (1). In general.
 - (2). Verdict and findings.
- 48. Scope and extent of relief.
- 49. — In general.
- 50. — Alternative, additional, or incidental relief to plaintiff.
- 51. — Relief to defendant.
- 52. Judgment or decree and enforcement thereof.
- 54. Costs.

319. QUO WARRANTO**SUBJECTS INCLUDED**

Writs of quo warranto and proceedings by information or action in the nature of writs

319. QUO WARRANTO

of quo warranto to try title to offices, franchises, etc.

Nature and scope of the remedy in general

Grounds of such writs or proceedings and defenses thereto

To and against whom, and as to what offices, franchises, etc., they are allowed

Jurisdiction over and proceedings on such writs, informations, or actions

Judgments and enforcement thereof, and costs in such proceedings

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Rights to and forfeiture of offices, franchises, etc., see PUBLIC EMPLOYMENT, FRANCHISES, CORPORATIONS AND BUSINESS ORGANIZATIONS, and topics relating to particular classes of officers and corporations

I. NATURE AND GROUNDS, ¶¶1–25.

II. PROCEDURE, ¶¶26–64.

I. NATURE AND GROUNDS.

1. Nature and scope of remedy.
2. Constitutional and statutory provisions.
3. Existence and adequacy of other remedies.
4. Adequacy of remedy by quo warranto.
5. Exclusiveness of remedy by quo warranto.
6. Discretion of court as to remedy.
7. Exercise of franchise or privilege in general.
8. Exercise of powers by municipality.
9. Exercise of public office.
10. — In general.
11. — Trial of title to office.
12. — Usurpation of or intrusion into office.
13. — Acts in excess of authority.
14. — Forfeiture of and removal from office.
15. Exercise of corporate franchises and powers.
16. — In general.
17. — Usurpation of corporate franchise.
18. — Acts in excess of corporate powers.
19. — Forfeiture of franchise and dissolution of corporation.
20. Exercise of corporate office.

I. NATURE AND GROUNDS.(Cont'd)

21. Exercise of private rights.
22. Defenses and grounds of opposition.
23. Abatement of proceedings.
24. Persons entitled to relief.
25. Persons as against whom relief may be granted.

II. PROCEDURE.

26. Form of remedy and conditions precedent.
27. Jurisdiction.
28. Venue.
29. Time to sue, limitations, and laches.
See also LIMITATION OF ACTIONS.
30. Parties plaintiff or petitioners.
31. — In general.
32. — Use of name of state.
33. — Public officers.
34. — Private persons.
35. — Joinder.
36. — Rights as to control of proceedings.
37. Parties defendant or respondents.
38. — In general.
39. — Joinder.
40. Intervention or substitution of parties.
41. Leave of court or order to sue.
- 41.1. — In general.
42. — Necessity.
43. — Application and proceedings thereon.
44. Consent of state officers.
45. Writ or other process or rule to plead.
46. Pleading.
- 46.1. — In general.
47. — Mode and form in general.
48. — Information.
49. — Complaint or petition.
50. — Plea or answer.
 - (1). In general.
 - (2). In proceedings to determine right to public office.
51. — Replication or reply and subsequent pleadings.
52. — Demurrer.
53. — Amended and supplemental pleadings.
54. — Issues, proof, and variance.
55. Evidence.

319. QUO WARRANTO**II. PROCEDURE.**(Cont'd)

- 56. Quashing or dismissal before hearing.
- 57. Scope of inquiry and powers of court.
- 58. Trial or hearing.
- 59. New trial or rehearing.
- 60. Scope and extent of relief.
- 61. Judgment or order and enforcement thereof.
- 62. Appeal and error.
- 63. Costs.
- 64. Operation and effect of ouster or forfeiture.

**319H. RACKETEER INFLUENCED
AND CORRUPT ORGANIZA-
TIONS**
SUBJECTS INCLUDED

- Civil and criminal liability arising from conducting the affairs of an enterprise through a pattern of racketeering or unlawful activity
- Acquiring or maintaining an interest in an enterprise through racketeering or unlawful activity

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

- Criminal and tort liability generally of associations, corporations, and partnerships, see **ASSOCIATIONS, CORPORATIONS AND BUSINESS ORGANIZATIONS, PARTNERSHIP**, and specific heads covering particular crimes and torts
- Conspiracies, see **CONSPIRACY**
- Engaging in a continuing criminal enterprise in violation of the Drug Abuse Prevention and Control Act, see **CONTROLLED SUBSTANCES**
- Engaging in interstate and foreign travel or transportation in aid of racketeering enterprises, see **COMMERCE**

- I. **FEDERAL REGULATION**, §1-99.
- (A) **IN GENERAL**, §1-54.

- I. **FEDERAL REGULATION**—Cont'd
- (B) **CIVIL REMEDIES AND PROCEEDINGS**, §55-89.
- (C) **CRIMINAL REMEDIES AND PROCEEDINGS**, §90-99.
- II. **STATE REGULATION**, §100-124.
- (A) **IN GENERAL**, §100-109.
- (B) **CIVIL REMEDIES AND PROCEEDINGS**, §110-118.
- (C) **CRIMINAL REMEDIES AND PROCEEDINGS**, §119-124.

I. FEDERAL REGULATION.**(A) IN GENERAL.**

- 1. In general.
- 2. Constitutional and statutory provisions.
- 3. Elements of violation in general.
Excludes effect on interstate commerce, see COMMERCE §82.60.
- 4. Racketeering or criminal activity.
- 4.1. — In general.
- 5. — Predicate acts in general.
Excludes number required to constitute a pattern, see §25 below, and dual use of predicate offense, see CRIMINAL LAW §29.
- 6. — What are predicate acts; racketeering or criminal activity.
- 7. — Particular acts.
- 8. — Extortion.
- 9. — Bribery.
- 10. — Fraud in general.
- 10.5. — Mail and wire fraud.
- 11. — Securities or commodities law violations.
- 12. — Labor law violations.
- 13. — Drug related activity.
- 14. — Collection of unlawful debts.
- 15. — Conspiracies.
- 16. — Investment or use of funds derived from racketeering or criminal activity.
- 17. — Effect of dismissal.
- 18. — Effect of limitations periods.
- 19. — Necessity of conviction.
- 20. — Misdemeanors.
- 21. — Aiding and abetting.
- 22. — Financial or economic purpose.
- 23. — Foreign activity.
- 24. Pattern of activity.
- 25. — In general.
- 26. — Number of predicate acts.
- 27. — Number of schemes, goals, episodes, or transactions.

319H. RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS**I. FEDERAL REGULATION.(Cont'd)**

- 28. — Continuity or relatedness; ongoing activity.
- 29. — Time and duration.
- 30. — Number of persons involved or victimized.
- 31. — Multiple mailings or communications; mail or wire fraud.
- 32. — Securities or commodities law violations.
- 33. Enterprise.
- 34. — In general.
- 35. — What constitutes enterprise in general.
- 36. — Informal entities; associations-in-fact.
- 37. — Legitimacy; connection with organized crime.
- 38. — Separateness from predicate acts, pattern, or persons.
- 39. — Particular enterprises.
- 40. — Employers and employees.
- 41. — Husbands and wives.
- 42. — Law or accounting firms.
- 43. — Banks or other financial institutions.
- 44. — Brokers and dealers.
- 45. — Labor organizations.
- 46. — Governmental entities.
- 47. — Professional, business, or trade associations.
- 48. — Decedents' estates.
- 49. Nexus between enterprise and acts.
- 50. Association with or participation in enterprise; control or intent.
Excludes vicarious liability and aider or abettor liability, see ¶64 below.

(B) CIVIL REMEDIES AND PROCEEDINGS.

- 55. In general.
- 55.5. Jurisdiction and venue.
Personal jurisdiction, see COURTS I(A) and FEDERAL COURTS X.
- 56. Persons entitled to sue or recover.
- 57. — In general.
- 58. — Injury in general.
- 59. — Business, property, or proprietary injury; personal injuries.
- 60. — Competitors; competitive injury.
- 61. — Shareholders or other investors; creditors.

I. FEDERAL REGULATION.(Cont'd)

- 62. — Causal relationship; direct or indirect injury.
- 63. — Separate or distinct racketeering or criminal enterprise injury.
- 64. Persons liable.
Excludes questions concerning association with or participation in enterprise, see ¶50, above. Includes questions of vicarious liability, aiding and abetting, and liability of enterprise itself.
- 65. Time to sue; limitation of actions.
- 66. Parties.
- 67. Process.
- 68. Pleading.
- 69. — In general.
- 70. — Racketeering or criminal activity; predicate acts.
- 71. — Investment or use of funds.
- 72. — Pattern.
- 73. — Enterprise.
- 74. — Association or participation.
- 75. — Injury; causation.
- 76. Evidence.
- 76.1. — In general.
- 77. — Presumptions and burden of proof.
- 78. — Admissibility.
- 79. — Weight and sufficiency.
- 80. Trial or hearing.
- 81. Relief.
Excludes injunctions and restraining orders, see INJUNCTION; declaratory relief, see DECLARATORY JUDGMENT; forfeitures, see FORFEITURES.
- 82. — In general.
- 83. — Disgorgement, divestiture, or restitution.
- 84. — Receivership or trusteeship.
- 85. — Damages.

(C) CRIMINAL REMEDIES AND PROCEEDINGS.

- 90. In general.
- 91. Indictment and information.
- 92. Evidence.
- 92.1. — In general.
- 93. — Presumptions and burden of proof.
- 94. — Admissibility.
- 95. — Weight and sufficiency.
- 96. Trial.
- 97. Instructions.
- 98. Sentence or punishment.
Excludes forfeitures, see FORFEITURES.

319H. RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS**II. STATE REGULATION.****(A) IN GENERAL**

- 100. In general.
- 101. Constitutional and statutory provisions.
- 102. Elements of violation in general.
- 103. Racketeering or criminal activity; predicate acts.
- 104. Pattern of activity.
- 105. Enterprise.
- 106. Nexus between enterprise and acts.
- 107. Association with or participation in enterprise; control or intent.

(B) CIVIL REMEDIES AND PROCEEDINGS.

- 110. In general.
 - 111. Persons entitled to sue or recover.
 - 112. Persons liable.
 - 113. Time to sue; limitation of actions.
 - 114. Process.
 - 115. Pleading.
 - 116. Evidence.
 - 117. Trial or hearing.
 - 118. Relief.
- Excludes injunctions and restraining orders, see INJUNCTION; declaratory relief, see DECLARATORY JUDGMENT; forfeitures, see FORFEITURES.*

(C) CRIMINAL REMEDIES AND PROCEEDINGS.

- 119. In general.
- 120. Indictment and information.
- 121. Evidence.
- 122. Trial.
- 123. Instructions.
- 124. Sentence and punishment.

320. RAILROADS**SUBJECTS INCLUDED**

Construction, maintenance, regulation, and operation of railroads in general

Organization of railroad companies, and their rights, powers, and liabilities in respect of grants of franchises and public aid, and of the construction and maintenance of their roads and other property, and their ownership and conveyance thereof

Rights and liabilities of their stockholders and officers

Rights, duties and liabilities of railroad companies, as to the public and as to individuals, in respect of the management and operation of their roads, otherwise than in their capacities of employers or carriers

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Aid to railroads, powers of states or municipalities, and liabilities incurred by them for that purpose, see STATES, MUNICIPAL CORPORATIONS, COUNTIES, TOWNS

Carriers, regulation of, see CARRIERS

City streets, railroads in, see URBAN RAILROADS

Commerce, regulation of, see COMMERCE

Corporations in general, matters applicable to, see CORPORATIONS AND BUSINESS ORGANIZATIONS

Eminent domain, power of railroad companies, and rights and remedies of owners of property taken or injured, see EMINENT DOMAIN

Employers, railroad companies as, see LABOR AND EMPLOYMENT

Interstate Commerce Commission, regulation by, see COMMERCE

Passengers and goods, carriage of, see CARRIERS

Public lands, grants of, or of rights of way through, see PUBLIC LANDS

Taxation of railroads, see TAXATION

I. CONTROL AND REGULATION IN GENERAL, ¶1-12.

II. RAILROAD COMPANIES, ¶13-33.

III. PUBLIC AID, ¶34-43.

IV. LOCATION, ¶44-60.

(A) LOCATION OF ROAD, ¶44-57.

(B) LOCATION AND ESTABLISHMENT OF STATIONS, ¶58-60.

V. RIGHT OF WAY AND OTHER INTERESTS IN LAND, ¶61-82.

VI. CONSTRUCTION, MAINTENANCE, AND EQUIPMENT, ¶83-117.

VII. SALES, LEASES, TRAFFIC CONTRACTS, AND CONSOLIDATION, ¶118-144.

VIII. FINANCIAL MATTERS, ¶145-202.

320. RAILROADS**VIII. FINANCIAL MATTERS—Cont'd**

- (A) NATURE AND EXTENT OF LIABILITIES, ¶145-179.
 - (B) FORECLOSURE OF LIENS AND MORTGAGES, ¶180-202.
- IX. RECEIVERS, ¶203-213.**
- X. OPERATION, ¶214-487.**
- (A) DUTY TO OPERATE, ¶214-222.
 - (B) STATUTORY, MUNICIPAL, AND OFFICIAL REGULATIONS, ¶223-255.
 - (C) COMPANIES AND PERSONS LIABLE FOR INJURIES, ¶256-273.
 - (D) INJURIES TO LICENSEES OR TRESPASSERS IN GENERAL, ¶273.5-282.
 - (E) ACCIDENTS TO TRAINS, ¶283-297.
 - (F) ACCIDENTS AT CROSSINGS, ¶298-353.
 - (G) INJURIES TO PERSONS ON OR NEAR TRACKS, ¶354-403.
 - (H) INJURIES TO ANIMALS ON OR NEAR TRACKS, ¶405-452.
 - (I) FIRES, ¶453-487.

I. CONTROL AND REGULATION IN GENERAL.

- 1. Right to construct and operate railroads in general.
- 1.5. Establishment or acquisition by public authorities.
- 2. What constitutes a railroad.
- 3. Appurtenances as part of railroad.
- 4. Status of railroads and railroad companies.
- 5. Power to control and regulate.
- 5.5. Federal control.
 - (.5). In general.
 - (1). Statutory and constitutional provisions.
 - (2). Possession and control under laws and executive proclamations or orders in general.
 - (3). Existing contracts.
 - (4). Rates or charges.
 - (5). State or municipal regulations of railroads, and proceedings for enforcement.
 - (6). Rights of action accruing before federal control, and remedies.
 - (7). Rights of action accruing during federal control, and remedies.
 - (7.1). — In general.
 - (8). — Attorney and client.

I. CONTROL AND REGULATION IN GENERAL.(Cont'd)

- (9). — Carriage of goods and passengers on railroads.
- (10). — Limitation of carrier's liability.
- (11). — Assault, false imprisonment, and malicious prosecution.
- (12). — Master and servant.
- (13). — Workers' compensation for injuries.
- (14). — Construction and maintenance.
- (15). — Mechanics' liens.
- (16). — Accidents at crossing.
- (17). — Injuries to animals.
- (18). — Fires.
- (19). — Liability for damages, penalties, interest, and costs.
- (20). — Actions in general.
- (21). — Continuance or stay.
- (22). — Jurisdiction and venue.
- (23). — Parties.
- (24). — Change or substitution of parties.
- (25). — Process and appearance.
- (26). — Attachment or garnishment.
- (27). — Injunction.
- (28). — Pleadings and evidence.
- (29). — Judgment and execution.
- (30). — Review.
- (31). Condemnation proceedings.
- (32). Taxes and assessments.
- (33). Offenses.
- (34). Consolidation roads.
- (35). Express companies under federal control.
- (36). Termination of federal control and redelivery of railroads to owners.
- (36.1). — In general.
- (37). — Status of employees.
- (38). — Rights of action and remedies in general.
- (39). — Contract rights.
- (40). — Carriage of goods.
- (41). — Construction or maintenance.

320. RAILROADS**I. CONTROL AND REGULATION
IN GENERAL.(Cont'd)**

- (42). — Actions.
- (43). — Jurisdiction and venue.
- (44). — Limitations.
- (45). — Parties.
- (46). — Change or substitution of parties.
- (47). — Process and appearance.
- (48). — Pleadings and evidence.
- (49). — Judgment and execution.
- (50). — Review.
- (51). Compensation for use of railroads, and guaranty of income.
- (52). Release or settlement by railroad company.
- 5.51. National Railroad Passenger Corporation (AMTRAK).
- 5.52. Consolidated Rail Corporation (Conrail).
- 6. Constitutional and statutory provisions.
- 7. Determination as to necessity for road.
- 8. License fees and taxes.
- 9. Supervision by public officers.
 - (1). In general.
 - (2). Enforcement and review of orders.
- 10. Judicial supervision.
- 11. Penalties for failure to construct or maintain railroad.
- 12. Offenses incident to construction and maintenance of railroad.

II. RAILROAD COMPANIES.

- 13. Nature and formation in general.
- 14. Incorporation, organization, and existence.
- 15. Capital and stock.
- 16. Stockholders.
- 17. Officers and agents.
- 18. Franchises and powers in general.
- 19. Amendment or revocation of charters.
- 20. Actions by or against companies.
- 20.1. — In general.
- 21. — Rights of action and defenses.
- 22. — Jurisdiction and venue.
 - (1). In general.
 - (2). Actions arising from contract.

II. RAILROAD COMPANIES.(Cont'd)

- (3). Actions for injuries to person or property.
- 22.5. — Time to sue and limitations.
See also LIMITATION OF ACTIONS.
- 23. — Parties.
- 24. — Process and appearance.
 - (1). In general.
 - (2). Effect of transfer, lease, consolidation, or receivership.
 - (3). Officer or agent on whom service may be made.
 - (4). Form and sufficiency of service and return.
- 25. — Pleading and evidence.
- 26. — Trial.
- 27. — Judgment and enforcement thereof.
- 28. — Appeal and error.
- 29. — Costs.
- 30. Reorganization.
- 31. Abandonment of franchise.
- 32. Forfeiture of franchise and dissolution.
- 33. Foreign companies.
 - (1). In general.
 - (2). Actions.

III. PUBLIC AID.

- 34. Rights under grants of aid in general.
- 35. Acceptance and performance of conditions.
- 36. Agreements in consideration of grant of aid.
- 37. Indemnity or security by railroad company.
- 38. Right to stock on payment of subscription.
- 39. Effect of sale, lease, or consolidation of railroad.
- 40. Negotiation and sale of securities.
- 41. Liability of railroad company for interest on securities.
- 42. Payment or redemption of securities by railroad company.
- 43. Reports and accounts.

IV. LOCATION.**(A) LOCATION OF ROAD.**

- 44. In general.
- 45. Discretion of company.

320. RAILROADS**IV. LOCATION.(Cont'd)**

- 46. Contracts as to location of road.
- 47. Determination as to location.
- 48. Parallel roads.
- 49. Branches and lateral roads.
- 50. Termini.
- 51. Connections with other roads.
- 52. Extensions.
- 53. Survey and record of location.
- 54. Change of location.
- 55. Conflicting locations.
- 56. Property in location.
- 57. Abandonment of location.

(B) LOCATION AND ESTABLISHMENT OF STATIONS.

- 58. In general.
- 59. Additional stations.
- 60. Removal or abandonment of stations.

V. RIGHT OF WAY AND OTHER INTERESTS IN LAND.

- 61. Capacity to acquire and hold land.
- 62. Purposes for which land may be acquired.
- 63. Modes of acquiring land or rights therein.
- 64. Agreements as to right of way or use of land.
 - (1). In general.
 - (2). Remedies.
- 65. Licenses.
- 66. Implied grants.
- 67. Conveyances to or for railroad company.
 - (1). In general.
 - (2). Rights and remedies of parties.
- 68. Extent of way or of land acquired.
- 69. Title, estate, or interest acquired.
- 70. Priority of right.
- 71. Exceptions and reservations in grants.
- 72. Covenants and conditions in grants.
 - (1). In general.
 - (2). Mode of construction of road in general.
 - (3). Location of road, termini, and stations.
 - (4). Private crossings, fences, and cattle guards.
 - (5). Successors or grantees of parties to grant.
 - (6). Waiver of performance and excuses for nonperformance.

V. RIGHT OF WAY AND OTHER INTERESTS IN LAND.(Cont'd)

- (7). Nature and effect of conditions.
- (8). Rights and remedies of parties.
- (8.1). — In general.
- (9). — Damages.
- 73. Use of lands or rights acquired.
 - (1). In general.
 - (2). Construction and effect of conveyance or license in general.
 - (3). Use by adjoining owners.
 - (4). Permitting use by third persons.
- 74. Rights in and use of highways and public places.
 - 74.1. — In general.
- 75. — Grant in general.
 - (1). In general.
 - (2). Legislative grant or authorization.
 - (3). Grant or consent by municipal authorities.
 - (4). Grant, consent, or remonstrance by abutting owners.
 - (5). Making, requisites, and validity of grant.
 - (6). Covenants and conditions in grant.
 - (7). Conflicting or exclusive grants and priority of right.
 - (8). Curative statutes.
- 76. — Nature and extent of right.
- 77. — Interference with use.
- 78. — Duration and termination of right.
- 79. — Remedies by and against companies.
- 80. Rights in and use of road or land of other railroad.
- 81. Conveyances or release by railroad company.
- 82. Abandonment and forfeiture of land or rights.
 - (1). In general.
 - (2). What constitutes abandonment.
 - (3). Breach of conditions of private grant.
 - (4). Revocation or forfeiture of grant of rights in highways and public places.
 - (5). Rights of parties or privies on abandonment.

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IN LAND.(Cont'd)**

- (6). Remedies of parties or persons interested.

**VI. CONSTRUCTION, MAINTENANCE,
AND EQUIPMENT.**

- 83. Authority and duty of railroad company.
- 84. Deposit of security.
- 85. Time for commencement and completion of construction.
- 86. Plan and mode of construction in general.
- 87. Roadbed and tracks.
- 88. Crossing other railroads.
- 88.1. — In general.
- 89. — Right to cross.
- 90. — Place, mode, and expense of crossing.
- 91. — Determination as to necessity, place, mode, and expenses of crossing.
 - (.5). In general.
 - (1). Statutory provisions.
 - (1.5). Nature and form of remedy.
 - (2). Jurisdiction and powers of courts.
 - (3). Parties, pleading, and evidence.
 - (4). Powers and proceedings of railroad or corporation commissioners.
 - (5). Appointment, powers, and proceedings of special commissioners.
 - (6). Injunction.
 - (7). Award, judgment, or decree.
 - (8). Review.
- 92. Crossing highways.
- 92.1. — In general.
- 93. — Right to cross.
- 94. — Place, mode, and expense of crossing.
 - (1). In general.
 - (2). Power to regulate.
 - (3). Character of highway.
 - (4). Crossing at grade or at different grades.
 - (5). Relocation or changing grade of highway.
 - (6). Remedies.
- 95. — Restoring and maintaining highway.
 - (1). In general.
 - (2). Statutory provisions.

**VI. CONSTRUCTION, MAINTENANCE,
AND EQUIPMENT.(Cont'd)**

- (3). Character of highway.
- (4). Companies and persons liable.
- (5). Mode and sufficiency of restoration or maintenance.
- (6). Bridges and approaches at crossings.
- (7). Agreements respecting restoration and maintenance.
- (8). Remedies of public.
- 96. — Highway laid out after construction of railroad.
- 97. — Determination as to necessity, place, mode, and expenses of crossing.
- 98. — Change after construction of railroad.
- 99. — Abolition and removal of grade crossings.
 - (1). In general.
 - (2). Place, mode, and expenses of new crossings.
 - (3). Agreements respecting abolition of grade crossings.
 - (4). Powers and proceedings of public officers or special commissioners.
 - (5). Powers and proceedings of railroad commissioners.
 - (6). Jurisdiction and proceedings of courts.
 - (6.1). — In general.
 - (7). — Supervisory jurisdiction.
 - (8). — Appointment and proceedings of commissioners or auditors.
 - (9). Assessment of damages.
 - (10). Remedies of taxpayers.
 - (11). Review.
 - (12). Operation and effect of abolition.
- 100. Crossing private lands.
- 100.1. — In general.
- 101. — Mode of construction.
- 102. — Private crossings.
 - (.5). In general.
 - (1). Duty to construct crossing in general.
 - (2). Statutory provisions.

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**VI. CONSTRUCTION, MAINTENANCE,
AND EQUIPMENT.(Cont'd)**

- (3). Character and condition of land of abutting owner.
- (4). Persons entitled to crossings.
- (5). Number, location, and purposes of crossings.
- (6). Plan, mode, and sufficiency of crossing.
- (7). Removal or change in location or mode of construction.
- (8). Obstruction of track or crossing.
- (9). Agreement with or waiver by abutting owner.
- (10). Actions and proceedings for enforcement of rights; injunction.
- (11). Recovery from railroad company of compensation for construction.
- (12). Penalties.
- 103. Fences and cattle guards.
 - (.5). In general.
 - (1). Duty to erect and maintain in general.
 - (2). Application of stock and fence laws.
 - (3). Time for construction.
 - (4). At what places required.
 - (5). Nature and sufficiency.
 - (6). Enforcement of rights.
 - (7). — In general.
 - (8). — Penalties.
- 106. Waters and water courses.

Common law liability for drainage problems, see WATER LAW §1172.
- 106.1. — In general.
- 107. — Mode of construction in general.
- 108. — Ditches, culverts, and bridges.
- 109. Maintenance and repair.
- 111. Liabilities for work, labor, or materials.
- 112. Injuries from construction or maintenance.
 - 112.1. — In general.
- 113. — Nature and extent of liability.
 - (.5). In general.
 - (1). Effect of authorization by state or municipality.
 - (2). Construction and maintenance in general.

**VI. CONSTRUCTION, MAINTENANCE,
AND EQUIPMENT.(Cont'd)**

- (3). Construction and maintenance along or across highways.
- (4). Construction and maintenance of fences and cattle guards.
- (5). Construction and maintenance over and near water courses.
- (6). Companies and persons liable for injuries.
- (7). Persons entitled to sue or recover damages.
- (8). Release, waiver, or estoppel of owner of property injured.
- (10). Proximate cause of injury.
- (11). Contributory negligence of person damaged.
- (12). Nuisance.
- 114. — Actions.
 - (.5). In general.
 - (.6). Nature and form of remedy; conditions precedent.
 - (.7). Jurisdiction and venue.
 - (1). Limitations, parties, and pleading.

See also LIMITATION OF ACTIONS.
 - (2). Evidence.
 - (3). Damages.
 - (4). Trial, judgment, and review.
 - (5). Injunction.
- 115. Motive power.
- 116. Rolling stock.
- 117. Completion, acceptance, and opening of road for traffic.
- VII. SALES, LEASES, TRAFFIC CONTRACTS,
AND CONSOLIDATION.**
- 118. Power to transfer franchises or property in general.
- 119. Constitutional and statutory provisions.
- 120. Powers of continuous or connecting lines.
- 121. Powers of parallel or competing lines.
- 122. Transfers to and contracts with foreign companies.
- 123. Consent of stockholders.
- 124. Consent of public authorities.
- 125. Sales.
 - 125.1. — In general.
- 126. — Power to buy or sell.
- 127. — Contracts for sale.

320. RAILROADS**VII. SALES, LEASES, TRAFFIC CONTRACTS, AND CONSOLIDATION.(Cont'd)**

- 128. — Conveyances.
- 129. — Rights and liabilities of purchasers.
 - (1). In general.
 - (2). Contracts in general.
 - (3). Covenants and conditions in grant of right of way.
 - (4). Injuries from construction and maintenance.
 - (5). Remedies by or against companies.
- 130. Leases.
 - 130.1. — In general.
- 131. — Power to make or take lease.
- 132. — Requisites and validity.
- 133. — Construction and operation.
 - (1). In general.
 - (2). Nature and form of contract.
 - (3). Property, rights, and franchises included.
 - (4). Maintenance and repair and rent.
 - (5). Rescission or forfeiture.
- 134. — Rights and liabilities of lessors and lessees.
 - (1). In general.
 - (2). Liability on contracts.
 - (3). Liabilities arising from construction and maintenance.
 - (4). Taxes and assessments.
 - (5). Application of earnings and income and management and control of road.
 - (6). On subletting or assignment of lease.
 - (7). Effect of invalidity of lease.
 - (8). Actions by or against lessor and lessee.
- 135. Contracts for control, operation, or use of railroads or incidental facilities.
 - 135.1. — In general.
- 136. — Power to make contracts.
- 137. — Requisites and validity.
- 138. — Construction and operation.
- 139. — Rights and liabilities of parties.
- 140. Consolidation.
 - 140.1. — In general.
- 141. — Power to consolidate.
- 142. — Agreements and proceedings.
- 143. — Operation and effect.

VII. SALES, LEASES, TRAFFIC CONTRACTS, AND CONSOLIDATION.(Cont'd)

- 144. — Rights and liabilities of parties.
 - (1). In general.
 - (2). Actions.

VIII. FINANCIAL MATTERS.**(A) NATURE AND EXTENT OF LIABILITIES.**

- 145. Power to incur indebtedness in general.
- 146. Liabilities on contracts in general.
- 147. Borrowing money.
- 148. Making and indorsement of negotiable instruments.
- 149. Making and issue of bonds.
 - 149.1. — In general.
- 150. — Authority to issue.
- 151. — Form, requisites, and validity.
- 152. — Negotiation and sale.
- 153. — Rights of bondholders in general.
- 154. Guaranty and suretyship.
- 155. Statutory liens in general.
- 156. Liens for public aid granted.
- 157. Liens for right of way or land granted.
- 158. Liens for rolling stock furnished.
- 159. Liens for labor or supplies.
 - (1). In general.
 - (2). Statutory provisions.
 - (3). Application of general lien laws.
 - (4). Nature and purpose of labor, material, or expenditure and use thereof.
 - (5). Property or fund covered by lien.
 - (6). Amount and duration of lien.
 - (7). Location of road and place of contract.
 - (8). Contracts supporting lien.
 - (9). Persons entitled to lien.
 - (10). Notice of claim or lien.
 - (10.1). — In general.
 - (11). — Time for filing lien or giving notice.
 - (12). — Form and sufficiency of statement or claims.
- 160. Liens for loans or advances.
- 161. Liens for damages.
- 162. Mortgages and trust deeds.
 - 162.1. — In general.
- 163. — Power to mortgage.
- 164. — Nature as security.

320. RAILROADS**VIII. FINANCIAL MATTERS.**(Cont'd)

- 165. — Form, requisites, and validity.
- 166. — Construction and operation in general.
- 167. — Property and funds included.
- 168. — Debts and obligations secured.
- 169. — Rights, duties, and liabilities of mortgagees and trustees.
- 170. Application of proceeds of obligations and securities.
- 171. Priorities of liens and mortgages.
 - (1). In general.
 - (2). Necessity and effect of registration.
 - (3). Priorities between mortgages and other claims in general.
 - (4). Liens for public aid granted.
 - (5). Liens for right of way or land granted.
 - (6). Liens for rolling stock furnished.
 - (7). Liens for labor, supplies, or advances.
 - (8). Liens for damages.
 - (9). Priorities between different mortgagees or bondholders.
 - (10). Persons entitled to priority and loss or waiver of right.
- 172. Interest and coupons.
- 173. Application of earnings, income, and sinking funds.
- 174. Payment and satisfaction.
- 175. Release or discharge.
- 176. Enforcement of liabilities against property.
- 177. — In general.
- 178. — Claims against specific property.
- 179. Actions on obligations.

(B) FORECLOSURE OF LIENS AND MORTGAGES.

- 180. Right to foreclose.
- 181. Foreclosure without action in general.
- 182. Foreclosure by exercise of power of sale.
- 183. Rights of action and defenses.
- 184. Jurisdiction and venue.
- 185. Limitations and laches.
See also LIMITATION OF ACTIONS.
- 186. Parties.
- 187. Process and appearance.
- 188. Pleading.
- 189. Evidence.

VIII. FINANCIAL MATTERS.(Cont'd)

- 190. Trial or hearing, and reference.
- 191. Judgment or decree and execution.
- 192. Sale.
- 193. Rights and liabilities of purchasers.
- 194. — In general.
 - 194.1. — Succession to franchises and powers of original company in general.
 - 194.2. — Grantees or successors of purchasers.
 - 194.3. — Injuries incident to construction and maintenance.
 - 194.4. — Contracts and agreements of predecessor in general.
 - 194.5. — Right of way and other interests in land.
 - 194.6. — Leases and traffic contracts.
 - 194.7. — Indebtedness, securities, liens and mortgages.
 - 194.8. — Possession and operation of road.
 - 194.9. — Actions or proceedings by or against purchasers.
 - 194.10. — Vacation or invalidity of sale.
- 195. — Purchasing bondholders or other creditors.
 - (1). In general.
 - (2). Rights, powers, liabilities, and proceedings of committees.
 - (3). Rights of bondholders, stockholders, and creditors.
- 196. Reorganization by purchasers.
- 197. Disposition of proceeds and surplus.
- 198. Review of proceedings.
- 199. Fees and costs.
- 200. Operation and effect.
- 201. Redemption.
- 202. Actions to set aside foreclosure.

IX. RECEIVERS.

- 203. Application of remedy to railroads.
- 204. Constitutional and statutory provisions.
- 205. Grounds of appointment.
- 206. Appointment, qualification, and tenure.
- 207. Powers and duties of receiver as affected by public interest in maintenance and operation of road.

320. RAILROADS**IX. RECEIVERS.(Cont'd)**

- 208. Powers and duties of receiver as affected by leases and traffic contracts before appointment.
- 209. Duties of receiver as to bondholders, mortgagees, and other creditors.
- 210. Authority to control and manage road, and exercise thereof in general.
- 211. Effect of appointment on status of railroad company.
- 212. Rights and liabilities of railroad company after discharge of receiver.
- 213. Foreign and ancillary receiverships.

X. OPERATION.**(A) DUTY TO OPERATE.**

- 214. Nature and extent of duty in general.
- 215. Branches and lateral and connecting roads.
- 216. Private branches, spurs, and side tracks.
- 217. Accommodations and facilities at stations.
- 218. Train service and accommodations.
- 219. Proceedings to compel operation.
- 220. Proceedings to compel furnishing of accommodations or facilities.
- 221. Injuries from failure to operate road.
- 222. Injuries to property from operation of road.
 - (1). In general.
 - (2). Nuisances in general.
 - (3). Occupation and obstruction of highways.
 - (4). Right of action.
 - (5). Actions.

(B) STATUTORY, MUNICIPAL, AND OFFICIAL REGULATIONS.

- 223. Authority, construction, and operation in general.
- 224. Companies and persons to whom applicable.
- 225. Facilities for shipment of goods.
- 226. Accommodations for passengers.
- 227. Train service.
- 229. Equipment of trains.
 - (.5). In general.
 - (1). Validity, construction, and purpose of statutory requirements.

X. OPERATION.(Cont'd)

- (2). Companies or railroads subject to requirements.
- (3). Violations of requirements.
 - (3.1). — In general.
 - (4). — Defective or insufficient brakes.
 - (5). — Defective or insufficient coupling devices.
 - (6). — Defective or insufficient grabirons or handholds and ladders.
 - (7). — Excusable violations.
 - (8). — Repairs and movements of cars for purpose of repairs.
- 230. Employees.

Excludes hours of labor, see LABOR AND EMPLOYMENT XIII(D).
- 231. Movement of trains in general.
- 232. Notices.
- 233. Signals and lookouts.
- 234. Rate of speed.
- 235. — In general.
- 236. — In cities, towns, and villages.
- 237. Roadbed, bridges, tunnels, and tracks.
- 238. Lighting track.
- 239. Crossing railroads.
- 240. — In general.
- 241. — Street railroads.
- 242. Crossing highways and public places.
 - 242.1. — In general.
- 243. — Signboards, signals, flagmen, and gates at crossings.
- 244. — Lights, signals, and lookouts from trains.
- 245. — Rate of speed.
- 246. Obstructing highways.
- 247. Crossing private roads.
- 249. Fire.
- 250. Reports and notices of accidents.
- 251. Presumptions and burden of proof as to negligence.
- 252. Contributory negligence as ground of defense.
- 253. Damages for violations of regulations.
- 254. Penalties for violations of regulations.
 - (.5). In general.
 - (1). Power to impose.
 - (2). Liability for penalty in general.
 - (3). Persons entitled to recover.

320. RAILROADS**X. OPERATION.(Cont'd)**

- (4). Successive violations.
- (5). Effect of operation of railroad by receiver.
- (6). Actions for penalties.
- 255. Offenses in operation of railroads.
 - (1). In general.
 - (2). Accommodations for passengers.
 - (3). Operation of trains in general.
 - (4). Obstructing highways with trains or cars.
 - (5). Wrecking or obstructing trains.
 - (6). Shooting or throwing missiles at or into trains.
 - (7). Effect of operation of road by receiver.
 - (8). Indictment, information, or complaint.
 - (8.1). — In general.
 - (9). — Wrecking or obstructing trains or cars.
 - (10). — Issues, proof, and variance.
 - (11). Evidence.
 - (12). Trial and review.
 - (13). Punishment.

**(C) COMPANIES AND PERSONS
LIABLE FOR INJURIES.**

- 256. Ownership, possession, and control of road in general.
- 257. Contractors for construction.
- 258. Vendors and purchasers.
- 259. Lessors and lessees.
 - (1). In general.
 - (2). Effect of lease in general.
 - (3). Necessity and effect of legislative authority.
 - (4). Form and validity of lease and assumption of liability by lessee.
 - (5). Operation by lessee in name or for interest of lessor.
 - (6). Special charter of lessee.
 - (7). Liabilities imposed by statute in general.
 - (8). Defects in roadbed.
 - (9). Injuries to shippers of goods and employees.
 - (10). Injuries to animals.
 - (11). Fires.

X. OPERATION.(Cont'd)

- 260. Companies permitting use of road by others.
- 261. Companies operating or using roads of others.
- 262. Connecting roads.
- 263. Consolidated roads.
- 264. Mortgagees and trustees in possession.
- 265. Effect of operation of road by receiver.
- 266. Joint liabilities.
- 267. Officers, agents, and employees.
- 268. Pleading ownership and operation.
- 269. Evidence as to ownership and operation.
 - 269.1. — In general.
- 270. — Presumptions and burden of proof.
- 271. — Admissibility.
- 272. — Sufficiency.
- 273. Trial.

**(D) INJURIES TO LICENSEES OR
TRESPASSERS IN GENERAL.**

- 273.5. In general.
- 274. Injuries to persons at stations.
 - (1). In general; care required and liability.
 - (2). Persons entitled to protection.
 - (3). Defects in stations and approaches thereto.
 - (4). Articles projecting, falling, or thrown from trains.
 - (5). Operation of trains.
- 275. Injuries to persons working on or about cars.
 - (1). In general; care required and liability.
 - (2). Persons entitled to protection.
 - (3). Signals, warnings, and lookouts.
 - (4). Defects in cars.
 - (5). Statutes applying rule of liability of master for injuries to servant.
- 276. Injuries to persons on trains.
 - (1). In general; care required and liability as to trespassers.
 - (2). Care required and liability as to licensees.
 - (3). Care required and liability as to children.
 - (4). Persons riding at invitation or by acquiescence of employees.

320. RAILROADS**X. OPERATION.(Cont'd)**

- (5). Application of rule of liability of master for injuries to servant.
- 277. Removal of trespassers.
- 277.5. Turntables and other attractive nuisances.
- 278. Contributory negligence.
 - (.5). In general.
 - (1). Persons at stations.
 - (2). Persons working on or about cars.
 - (3). Persons on trains or cars.
 - (3.1). — In general.
 - (4). — Children.
 - (5). Trespassers removed from trains.
 - (6). Injury avoidable notwithstanding contributory negligence.
- 279. Proximate cause of injury.
- 280. Willful or wanton injury.
- 281. Acts or omissions of employees or others.
 - (1). In general.
 - (2). Inviting or permitting persons to ride on trains or cars.
 - (3). Removal of trespassers from trains or cars.
 - (3.1). — In general.
 - (4). — Children.
 - (5). Removal of trespassers from depots and other property.
 - (6). Acts of third persons.
- 282. Actions for injuries to licensees or trespassers.
 - (.5). In general.
 - (.6). Conditions precedent.
 - (1). Pleading.
 - (1.1). — In general.
 - (2). — Issues, proof, and variance.
 - (3). Presumptions and burden of proof.
 - (4). Admissibility of evidence.
 - (5). Weight and sufficiency of evidence.
 - (6). Damages.
 - (7). Questions for jury.
 - (7.1). — In general.
 - (8). — Injuries to persons at stations.
 - (9). — Injuries to persons working on or about cars.

X. OPERATION.(Cont'd)

- (10). — Injuries to persons on trains.
- (11). — Removal of trespassers.
- (12). Instructions.
- (12.1). — In general.
- (13). — Injuries to persons at stations.
- (14). — Injuries to persons working on or about cars.
- (15). — Injuries to persons on trains and removal of trespassers.
- (16). Verdict and findings.

(E) ACCIDENTS TO TRAINS.

- 283. Care in management of trains in general.
- 284. Defects in engines or cars.
- 285. Rate of speed.
- 286. Collisions.
- 287. — In general.
- 288. — At railroad crossings.
- 289. Defects in roadbeds or tracks.
- 290. Obstructions on tracks in general.
- 291. Animals on tracks.
- 292. Incompetency, negligence, or misconduct of employees.
- 293. Wrongful acts of third persons.
- 294. Injuries caused.
- 295. Contributory negligence.
- 296. Proximate cause of injury.
- 297. Actions for injuries.
 - (.5). In general.
 - (1). Pleading.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility of evidence.
 - (4). Sufficiency of evidence.
 - (5). Damages.
 - (6). Questions for jury.
 - (6.1). — In general.
 - (7). — Contributory negligence.
 - (8). Instructions.
 - (8.5). Verdict and findings.
 - (9). Appeal and error.

(F) ACCIDENTS AT CROSSINGS.

- 298. Public or private character of crossings.
- 298.1. — In general.

320. RAILROADS

X. OPERATION.(Cont'd)

- 299. — Highways and other public places.
- 300. — Crossings by license or custom.
- 301. Mutual rights and duties at public crossings.
- 302. Mutual rights and duties at places not public crossings.
- 303. Defects in crossings and approaches.
 - (1). In general; duty and liability.
 - (2). Character of highway.
 - (3). Nature of defect.
 - (4). Bridges.
 - (5). Changing location of highway.
 - (6). Private crossings.
 - (7). Knowledge by railroad company of defect or danger.
- 304. Obstructions at crossings.
- 305. Frightening animals.
 - (1). In general.
 - (2). By signals and escape of steam.
 - (3). By obstructions on or near crossing.
- 306. Signboards, signals, flagmen, and gates at crossings.
- 307. — In general.
- 307.1. — Customary methods.
- 307.2. — Signboards.
- 307.3. — Signals and warnings.
- 307.4. — Gates, lights, and flagmen.
 - (1). In general.
 - (2). Persons entitled to protection.
 - (3). Improper management; withdrawal after establishment.
- 307.5. — Duty irrespective of statute, ordinance, or official regulation.
- 308. — Violations of statutes or ordinances.
- 309. Care in running trains in general.
- 310. Mode of running at crossings.
- 311. Lights, signals, and lookouts from trains or cars.
- 312. — In general.
 - (1). In general.
- 312.1. — Lights.
- 312.2. — Signals.
- 312.3. — Lookouts.
- 312.4. — Customary methods.
- 312.5. — At what crossing required.
 - (1). In general.

X. OPERATION.(Cont'd)

- (2). Private crossings and crossings by license or custom.
- 312.6. — Persons entitled to benefit of signals.
 - (1). In general.
 - (2). Drivers of teams.
- 312.7. — To what trains or cars applicable in general.
- 312.8. — Backing trains over crossings.
- 312.9. — Running unattended cars over crossing.
- 312.10. — Duty when view or hearing obstructed.
- 312.11. — Excuses for failure to give signals.
- 312.12. — Effect of compliance with statutes or ordinances.
- 312.13. — Duty irrespective of statute or ordinance.
- 313. — Violations of statutes or ordinances.
- 314. Obstruction of view or hearing.
- 315. Rate of speed.
- 316. — In general.
 - (1). In general.
 - (2). Nature and locality of crossing.
 - (3). Where view or hearing is obstructed.
 - (4). Duty irrespective of statutes or ordinances.
- 317. — Violations of statutes or ordinances.
- 318. Means of controlling trains.
- 319. Precautions as to persons seen at or near crossing.
- 320. — In general.
- 321. — Children.
- 322. — Infirm or helpless persons.
- 323. Contributory negligence.
 - 323.1. — In general.
- 324. — Care in going on or near tracks in general.
 - (1). In general.
 - (2). Construction and effect of statutory provisions.
 - (3). Wrongful or unlawful acts or conduct.
 - (4). Care of horses or teams in general.

320. RAILROADS**X. OPERATION.(Cont'd)**

325. — Care required of children and others under disability.
- (1). In general.
 - (2). Deaf or blind persons.
 - (3). Intoxicated persons.
 - (4). Use of defective or obstructed crossing.
 - (5). Duty to stop, look, and listen.
 - (6). Crossing near approaching trains or cars.
326. — Use of defective or obstructed crossings.
- (1). In general.
 - (2). Passing over, between, or under standing trains or cars.
 - (3). Crossing while gates are closed or being closed.
 - (4). Knowledge of danger.
 - (5). Effect of violation of statute or ordinance by railroad company.
327. — Duty to stop, look, and listen.
- (1). In general.
 - (2). Opportunity to see or hear train.
 - (3). Duty of pedestrians to stop, look, and listen.
 - (4). Duty to both look and listen.
 - (5). Duty to look in both directions.
 - (6). Time and mode of running of trains.
 - (7). Duty to stop before reaching crossing.
 - (8). Time and place for looking and listening.
 - (9). After passing of train.
 - (10). Attention attracted by other trains.
 - (11). Speed of person injured in approaching crossing.
 - (12). Occupant of vehicle driven by another.
 - (13). Character of crossing.
328. — Duty where view or hearing obstructed.
- (1). In general.
 - (2). Duty to stop before reaching crossing.
 - (3). Duty of driver of vehicle to go ahead to look and listen.

X. OPERATION.(Cont'd)

- (4). Time and place for looking and listening.
 - (5). Speed of person injured in approaching crossing.
 - (6). Crossing behind passing trains.
 - (7). Noises preventing hearing of train.
 - (8). Darkness or stormy weather.
 - (9). Smoke, steam, and dust.
 - (10). Standing cars.
 - (11). Covering head, muffling ears, or riding in covered vehicle.
 - (12). Obstructions made or permitted by railroad company.
329. — Knowledge of danger.
330. — Reliance on precautions on part of railroad company.
- (1). In general.
 - (2). Signboards, signals, flagmen, and gates at crossings.
 - (3). Lights and signals from trains or cars.
 - (4). Rate of speed of trains.
331. — Effect of directions of railroad employees.
- (1). In general.
 - (2). Employees in charge of trains obstructing crossings.
 - (3). Employees in charge of signals and gates at crossings.
 - (4). Disregarding warnings and signals.
332. — Crossing near standing trains or cars.
333. — Crossing near approaching trains or cars.
- (1). In general.
 - (2). Distance of train and imminence of danger.
 - (3). Intervening incidents causing delay in crossing track.
334. — Acts in emergencies.
335. — Effect in general.
- (1). In general.
 - (2). Failure to maintain signboards, flagmen, and gates at crossing.
 - (3). Failure to give signals from trains.
 - (4). Unlawful or excessive speed of trains.
 - (5). Contributory negligence as proximate cause of injury.

320. RAILROADS

X. OPERATION.(Cont'd)

- 335.5. — Imputed contributory negligence.
- 337. Proximate cause of injury.
 - (1). In general.
 - (2). Defects or obstructions at crossings.
 - (3). Fright or unmanageableness of horses.
 - (4). Management of gates.
 - (5). Failure to give signals from trains.
 - (6). Unlawful rate of speed.
- 338. Injury avoidable notwithstanding contributory negligence.
- 338.1. — In general; situation of peril.
- 338.2. — Knowledge or appreciation of peril in general.
- 338.3. — Reliance on precautions on part of persons approaching crossing.
- 338.4. — Opportunity to avoid injury.
- 338.5. — Care required after discovery of peril.
- 338.6. — Continuing or concurrent negligence of person injured.
- 339. Willful or wanton acts and gross negligence.
 - (1). In general.
 - (2). Effect as to contributory negligence.
- 340. Acts or omissions of employees or others.
 - (.5). In general.
 - (1). Employees.
 - (2). Third persons.
- 341. Actions for injuries.
- 341.1. — In general.
- 342. — Conditions precedent.
- 343. — Jurisdiction and venue.
- 344. — Pleading.
 - (.5). In general.
 - (1). Form and sufficiency of allegations in general.
 - (2). Character and description of crossing.
 - (3). Defects and obstructions at crossings.
 - (4). Frightening animals.
 - (5). Management of locomotives, trains, or cars in general.
 - (6). Violation of statutes or ordinances.

X. OPERATION.(Cont'd)

- (7). Proximate cause of injury.
- (8). Negating contributory negligence.
- (9). Willful or wanton acts and gross negligence.
- (10). Pleading contributory negligence or other fault.
- 345. — Issues, proof, and variance.
 - (1). In general.
 - (2). Matters to be proved.
 - (3). Evidence admissible under pleadings.
 - (4). Variance between allegations and proof.
- 346. — Presumptions and burden of proof.
 - (1). In general.
 - (2). Construction and effect of statutory provisions.
 - (3). Existence of defect or happening of accident or injury.
 - (4). Violation of statutes or ordinances.
 - (5). Contributory negligence.
 - (5.1). — In general.
 - (6). — Duty to stop, look, and listen.
 - (7). Proximate cause of injury.
- 347. — Admissibility of evidence.
 - (1). In general.
 - (2). Customary methods and acts.
 - (3). Nature and circumstances of injury.
 - (4). Similar facts and transactions.
 - (6). Character and description of crossing.
 - (7). Defects or obstructions at crossing.
 - (8). Signboards, signals, lights, flagmen, and gates at crossings.
 - (9). Lights, signals, and lookouts from trains.
 - (10). Rate of speed.
 - (11). Contributory negligence.
- 348. — Sufficiency of evidence.
 - (1). In general.
 - (2). Place of accident and cause of injury.
 - (3). Signals, flagmen, and gates at crossings.

320. RAILROADS**X. OPERATION.(Cont'd)**

- (4). Lights, signals, and lookouts from trains.
- (5). Rate of speed.
- (6). Contributory and comparative negligence; apportionment.
- (6.1). — In general.
- (7). — Children.
- (8). — Failure to stop, look, and listen.
- (9). — Duty where view or hearing obstructed.
- (10). — Reliance on precautions on part of railroad company.
- (11). Willful or wanton acts and gross negligence.
- 349. — Damages.
- 350. — Questions for jury.
 - (1). In general.
 - (2). Character of crossing.
 - (3). Defects and obstructions at crossings.
 - (4). Frightening animals.
 - (5). Signboards, signals, flagmen, and gates at crossings.
 - (6). Mode of running at crossings in general.
 - (7). Lights, signals, and lookouts from trains or cars.
 - (7.1). — In general.
 - (8). — Method of moving trains or cars.
 - (9). — Where view or hearing obstructed.
 - (10). — Duty irrespective of statute.
 - (11). Rate of speed.
 - (12). Precautions as to persons seen at or near crossing.
 - (13). Contributory negligence in general.
 - (14). Contributory negligence of children and others under disability.
 - (15). Use by person injured of defective or obstructed crossing.
 - (16). Duty of person injured to stop, look, and listen.
 - (16.1). — In general.
 - (17). — Opportunity to see or hear train.

X. OPERATION.(Cont'd)

- (18). — Duty to stop before reaching crossing.
- (19). — Time, place, and direction for looking and listening.
- (20). — Attention attracted by other train.
- (21). — Occupant of vehicle driven by another.
- (22). Duty of person injured where view or hearing is obstructed.
- (22.1). — In general.
- (23). — Duty to stop or to go ahead of vehicle to look and listen.
- (24). — Time and place for looking and listening.
- (25). — Crossing behind passing trains and attraction of attention from approaching train.
- (26). — Darkness, fog, smoke, and stormy weather.
- (27). — Standing cars.
- (28). Reliance on precautions on part of railroad company.
- (29). Effect as to contributory negligence of directions of railroad employees.
- (30). Crossing near standing or approaching trains or cars.
- (31). Acts in emergencies.
- (32). Proximate cause of injury.
- (33). Injury avoidable notwithstanding contributory negligence.
- (34). Willful, wanton, or gross negligence.
- 351. — Instructions.
 - (1). In general.
 - (2). Conformity to pleadings and issues.
 - (3). Presumptions and burden of proof.
 - (4). Character of crossing and rights and duties of railroad company and public therein.
 - (5). Defects and obstructions at crossings.
 - (6). Frightening animals.
 - (7). Signals and flagmen at crossings.
 - (8). Care in running trains in general.

320. RAILROADS**X. OPERATION.(Cont'd)**

- (9). Lights, signals, and lookouts from trains or cars.
- (10). Rate of speed.
- (11). Precautions as to persons seen at or near crossing.
- (12). Contributory negligence.
- (12.1). — In general.
- (13). — As proximate cause of injury.
- (14). — Children and others under disability.
- (15). — Use of defective or obstructed crossing.
- (16). — Duty to stop, look, and listen in general.
- (17). — Duty where view or hearing obstructed.
- (18). — Reliance on precautions on part of railroad company.
- (19). — Effect of directions of railroad employees.
- (20). — Effect.
- (21). Proximate cause of injury.
- (22). Injury avoidable notwithstanding contributory negligence.
- (23). Willful, wanton, or gross negligence, and unauthorized acts of employees.
- (24). Damages.
- 352. — Verdict and findings.
- 353. — Appeal and error.

(G) INJURIES TO PERSONS ON OR NEAR TRACKS.

- 354. Right to go on or near track.
- 355. — In general.
 - (1). In general.
 - (2). Tracks on or crossing streets or highways.
 - (3). Violation of statutes.
 - (4). Places provided for crossing track.
 - (5). Persons working on or about tracks or transacting business with railroad company.
- 356. — Customary use of track.
 - (1). In general.
 - (2). Nature and form of acquiescence by railroad company.
 - (3). Duration and extent of user.

X. OPERATION.(Cont'd)

- (4). Sufficiency and effect of signboards and warnings.
- (5). Violation of statutes.
- (6). Persons working on or about track.
- (7). Approaches to stations.
- 357. Care required in general.
- 358. Care required as to licensees.
 - (1). In general.
 - (2). Children.
- 359. Care required as to trespassers.
 - (1). In general.
 - (2). Children.
- 360. Frightening animals near railroad.
 - (1). In general.
 - (2). By smoke, noise, or escape of steam.
 - (3). By signals from trains.
 - (4). Permitting cars to stand on or near highway.
- 361. Failure to fence railroad.
- 362. Defects in roadbed, tracks, or equipment.
 - (.5). In general.
 - (1). Roadbed or tracks.
 - (2). Equipment.
- 363. Derailment of trains.
- 364. Articles projecting, falling, or thrown from trains.
- 365. Mode of running trains or cars.
- 366. Signals and lookouts.
- 367. — In general.
- 368. — Violations of statutes or ordinances.
- 369. — Persons entitled to benefit of signals and lookouts.
 - (1). In general.
 - (2). Provisions of statutes or ordinances in general.
 - (3). Licensees and trespassers in general.
 - (4). Children and others under disability.
- 370. — Places for giving signals or keeping lookout.
- 371. Rate of speed.
- 372. — In general.
 - (1). In general.

320. RAILROADS**X. OPERATION.(Cont'd)**

- (2). Construction and effect of statutes or ordinances in general.
- (3). Duty irrespective of statute or ordinance.
- (4). Persons entitled to care as to speed.
- (5). Places at which speed should be reduced.
- 373. — Violations of statutes or ordinances.
- 374. Means of controlling trains.
- 375. Precautions as to persons seen on or near track.
- 376. — In general.
- 376.1. — Care required in general.
- 376.2. — Duty as to trespassers in general.
- 376.3. — Provisions of statutes.
- 376.4. — Duty to stop or slacken speed in general.
- 377. — Right to presume that person will leave track or avoid danger.
- 378. — Children.
- 379. — Infirm or helpless persons.
- 380. Contributory negligence.
- 380.1. — In general.
- 381. — Care required of persons on or near tracks in general.
 - (1). In general.
 - (2). Care required of licensees.
 - (3). Use of track in general.
 - (4). Customary use of track.
 - (5). Disregarding warnings and signals.
 - (6). Crossing trestles or bridges.
 - (7). Care of horses or teams.
 - (8). Passing over, under, or between standing trains or cars.
 - (9). Going on track near approaching trains or cars.
- 382. — Care required of children and others under disability.
 - (5). In general.
 - (1). Children.
 - (1.1). — In general.
 - (2). — Going to sleep on track.
 - (3). — Failure to look or listen for approaching trains.
 - (4). — Acts in emergencies.
 - (5). — Crossing near approaching trains or cars.

X. OPERATION.(Cont'd)

- (6). Persons under physical disability.
- 383. — Failure to look or listen for approaching train.
 - (1). In general.
 - (2). As affected by right to go on track.
 - (3). Opportunity to see or hear train.
 - (4). Attention attracted by other trains or cars.
 - (5). Covering head or muffling cars.
- 384. — Knowledge of danger.
- 385. — Reliance on precautions on part of railroad company.
- 386. — Acts in emergencies.
- 387. — Effect in general.
- 389. Proximate cause of injury.
 - (1). In general.
 - (2). Defects in roadbed or equipment.
 - (3). Frightening animals.
 - (4). Signals and lookouts.
 - (5). Rate of speed.
- 390. Injury avoidable notwithstanding contributory negligence.
- 391. Willful or wanton acts and gross negligence.
 - (1). In general.
 - (2). Frightening animals near railroad.
 - (3). Rate of speed, and signals, lights, and lookouts.
 - (4). Precautions as to persons seen on or near track.
- 392. Acts or omissions of employees or others.
- 393. Actions for injuries.
- 393.1. — In general.
- 394. — Pleading.
 - (1). In general.
 - (2). Right to go on or near track.
 - (3). Frightening animals near railroad.
 - (4). Violations of statutes or ordinances.
 - (5). Negating contributory negligence.
 - (6). Injury avoidable notwithstanding contributory negligence and willful and wanton acts.
 - (7). Pleading contributory negligence or other fault.
- 395. — Issues, proof, and variance.

320. RAILROADS**X. OPERATION.(Cont'd)**

- 396. — Presumptions and burden of proof.
 - (1). In general.
 - (2). Existence of defect or happening of accident or injury.
- 397. — Admissibility of evidence.
 - (1). In general.
 - (2). Similar facts and transactions.
 - (4). Right to go on or near track.
 - (5). Customary use of track.
 - (6). Defects in roadbed, tracks, or equipment.
 - (7). Signals and lookouts.
 - (8). Violation of statutes or ordinances.
 - (9). Precautions as to persons seen on or near track.
 - (10). Contributory negligence.
- 398. — Sufficiency of evidence.
 - (1). In general.
 - (2). Signals, lights, and lookouts.
 - (3). Precautions as to persons seen on or near track.
 - (4). Contributory negligence.
 - (5). Willful, wanton, or unauthorized acts of employees.
- 399. — Damages.
- 400. — Questions for jury.
 - (5). In general.
 - (1). Nature and circumstances of injury in general.
 - (2). Customary use of track and care required as to licensees and trespassers.
 - (3). Frightening animals.
 - (4). Failure to fence railroad and defects in roadbed, tracks, or cars.
 - (5). Derailment of trains and articles projecting, falling, or thrown therefrom.
 - (6). Signals and lookouts.
 - (7). Rate of speed and means of controlling trains.
 - (8). Precautions as to persons seen on or near track.
 - (8.1). — In general.
 - (9). — Children and others under disability.
 - (10). Contributory negligence.
 - (10.1). — In general.

X. OPERATION.(Cont'd)

- (11). — Children and others under disability.
 - (12). — Failure to look and listen for approaching train.
 - (13). — Acts in emergencies.
 - (14). Injury avoidable notwithstanding contributory negligence.
 - (15). Willful, wanton, or gross negligence.
 - (16). Acts of employees of railroad company.
 - 401. — Instructions.
 - (1). In general.
 - (2). Conformity to pleadings and issues.
 - (3). Frightening animals near railroad.
 - (4). Defects in roadbed or equipment.
 - (5). Signals and lookouts.
 - (6). Rate of speed.
 - (7). Precautions as to persons seen on or near track.
 - (8). Contributory negligence.
 - (9). Injury avoidable notwithstanding contributory negligence, and willful or wanton acts.
 - 402. — Verdict and findings.
 - 403. — Judgment and execution.
- (H) INJURIES TO ANIMALS ON OR NEAR TRACKS.**
- 405. Care required and liability as to animals in general.
 - 406. Effect of stock laws or fence laws in general.
 - 407. Frightening animals near railroad.
 - 408. Attracting animals to railroad.
 - 409. Accidents at places open to public in general.
 - 410. Accidents at or near public crossings.
 - 411. Requirements as to fences and cattle guards in general.
 - (1). In general.
 - (2). Agreement of railroad company to erect and maintain fences.
 - (3). Effect of failure to erect fences and cattle guards in general.
 - (4). Effect of erection of fences as to liability and care required.
 - (5). Care required and liability where fencing is not required.

320. RAILROADS**X. OPERATION.(Cont'd)**

- (6). Trespassing animals and effect of stock laws.
- (6.5). Character or species of animals injured.
- (7). Time for construction of fences and excuses for failure to fence.
- (8). Waiver or agreement of adjoining landowner.
- (9). Effect of award of damages to adjoining owner for fencing.
- (10). Persons entitled to benefit of fences.
- (10.5). Nature and cause of injury.
- (11). Place of entry of animals on right of way.
- (12). At what places required.
- (12.1). — In general.
- (13). — Determination of necessity or location.
- (14). — Public or private convenience in general.
- (15). — In cities, towns, and villages.
- (16). — Stations, switchyards, and depot grounds.
- (17). — Improved or inclosed lands.
- (18). — Highways.
- 412. Defects in fences or cattle guards.
 - (1). In general; duty to maintain.
 - (2). Knowledge of defect and opportunity to repair.
 - (3). Cause of defect.
 - (4). Sufficiency of fences and cattle guards.
 - (5). Approval by public officers.
- 413. Private crossings, gates, and bars.
 - (.5). In general.
 - (1). Duty to construct and maintain crossings, gates, and cattle guards.
 - (2). Persons entitled to benefit of gates or bars.
 - (3). Knowledge of condition of crossing and opportunity to remedy defect.
 - (4). Duty to keep gates or bars closed.
 - (5). Defects created by third persons or abutting owner.

X. OPERATION.(Cont'd)

- (6). Liability for defects in crossings, gates, or bars.
- (7). Effect of waiver or agreement of abutting owner.
- 414. Injuries by running on roadbed, trestles, or bridges.
- 415. Signals and lookouts.
 - (.5). In general.
 - (1). Failure to give signals in general.
 - (1.5). Lights on locomotives or cars.
 - (2). Duty to keep lookout in general.
 - (3). At what places required.
 - (4). Place of injury.
 - (5). Duty where track is fenced and effect of stock laws.
- 416. Obstruction of view.
- 417. Rate of speed.
- 418. Means of controlling trains.
- 419. Care as to animals seen on or near track.
 - (1). In general.
 - (2). Species of animal on track.
 - (3). Animals as trespassers and care required where track is fenced.
 - (4). Duty to stop or slacken speed in general.
 - (5). Animals standing or walking at side of or approaching track.
 - (6). Where collision is inevitable.
 - (7). Stock alarms.
- 420. Contributory negligence.
- 421. — In general.
- 422. — Railroad fences, gates, and bars.
- 423. — Escape of animals from inclosure or control.
- 424. — Allowing animals to go at large.
- 425. Proximate cause of injury.
- 426. Injury avoidable notwithstanding contributory negligence.
- 427. Willful, wanton, or unauthorized acts, and gross negligence.
- 428. Species of animal injured.
- 429. Persons entitled to damages.
- 430. Notice of claim.
- 431. Appraisement of damages.
- 432. Summary proceedings for damages.
- 433. Actions for injuries to animals.
 - 433.1. — In general.

320. RAILROADS

X. OPERATION.(Cont'd)

- 434. — Rights of action and defenses.
- 435. — Jurisdiction and venue.
- 436. — Time to sue and limitations.
See also LIMITATION OF ACTIONS.
- 437. — Parties.
- 438. — Process and appearance.
- 439. — Pleading.
 - (1). In general.
 - (2). Time and place of injury.
 - (3). Fences and cattle guards.
 - (4). Injuries from moving trains in general.
 - (5). Signals and lookouts and precautions as to animals seen on or near track.
 - (6). Acts or omissions of employees.
 - (7). Notice of claim.
 - (8). Answer and reply.
 - (9). Amendment.
- 440. — Issues, proof, and variance.
- 441. — Presumptions and burden of proof.
 - (1). In general.
 - (2). Fact of killing or injuring.
 - (2.1). — In general.
 - (3). — As affected by locality of accident or custody of animals.
 - (4). — Finding dead or injured animal near track.
 - (5). — Evidence rebutting presumption.
 - (6). Fences and cattle guards.
 - (7). Private crossings, gates, and bars.
 - (8). Signals and lookouts, rate of speed, and precautions as to animals seen on track.
 - (9). Contributory negligence.
- 442. — Admissibility of evidence.
 - (1). In general.
 - (2). Similar facts and transactions.
 - (3). Condition of fences and cattle guards.
 - (5). Failure to erect fences or cattle guards.
 - (6). Care in running trains.
 - (7). Contributory negligence.
 - (8). Proceedings for appraisalment of damages.
- 443. — Sufficiency of evidence.
 - (1). In general.

X. OPERATION.(Cont'd)

- (2). Cause of injury in general.
- (3). Nature and extent of injury or damage.
- (4). Time and place of injury.
- (5). Failure to erect fences and cattle guards.
- (6). Defects in fences, cattle guards, gates, or bars.
- (7). Signals and lookouts and precautions as to animals seen on or near track.
- (8). Contributory negligence.
- (9). Willful, wanton, or gross negligence.
- 444. — Damages.
- 445. — Conduct of trial in general.
- 446. — Questions for jury.
 - (1). In general.
 - (2). Cause of injury in general.
 - (3). Fact of killing or injuring animals.
 - (4). Accidents at crossings.
 - (5). Fences and cattle guards.
 - (5.1). — In general.
 - (6). — Cause of injury and place of entry on right of way.
 - (7). — At what places required.
 - (8). — Defects in fences and cattle guards.
 - (9). — Private crossings, gates, and bars.
 - (10). Signals and lookouts and precautions as to animals seen on or near track.
 - (11). Rate of speed.
 - (12). Contributory negligence.
 - (13). Proximate cause of injury.
 - (14). Willful or wanton injuries.
- 447. — Instructions.
 - (1). In general.
 - (2). Conformity to pleadings and issues.
 - (3). Presumptions and burden of proof.
 - (4). Fences and cattle guards in general.
 - (5). Defects in crossings, fences, and cattle guards.
 - (6). Private crossings, gates, and bars.

320. RAILROADS**X. OPERATION.**(Cont'd)

- (7). Signals and lookouts and precautions as to animals seen on or near track.
- (8). Contributory negligence.
- 448. — Verdict and findings.
- 449. — Judgment.
- 450. — Execution and enforcement of judgment.
- 452. — Costs.
- (I) FIRES.
- 453. Care required and liability as to fires in general.
- 454. Defects in construction of engines.
 - (1). In general.
 - (2). Customary methods and newest, safest, and best appliances.
 - (3). Effect of adoption or use of ordinary appliances or precautions.
- 455. Management of engines.
- 456. Combustibles on railroad property.
- 457. Preventing spread of fire.
- 458. Contributory negligence.
- 459. — In general.
 - (1). In general.
 - (2). Erection of buildings or placing property near railroad.
- 460. — Combustibles near railroad.
- 461. — Precautions against communication of fire.
- 462. — Extinguishment of fire.
- 463. Proximate cause of injury.
- 464. — In general.
- 465. — Spread of fire.
- 466. Injury avoidable notwithstanding contributory negligence.
- 467. Property injured or destroyed.
- 468. Effect of statutes giving railroad company insurable interest.
- 469. Contracts for exemption from liability.
- 470. Persons entitled to damages.
- 471. Actions for injuries by fire.
 - 471.1. — In general.
- 472. — Nature and form of remedy.
- 473. — Rights of action and defenses.
- 474. — Jurisdiction and venue.
- 475. — Time to sue and limitations.
See also LIMITATION OF ACTIONS.
- 476. — Parties.

X. OPERATION.(Cont'd)

- 477. — Process and appearance.
- 478. — Pleading.
 - (1). In general.
 - (2). Acts of agents or employees.
 - (3). Defects in and management of engines.
 - (4). Combustibles on railroad property.
 - (5). Preventing spread of fire.
 - (6). Proximate cause of injury.
 - (7). Answer.
- 479. — Issues, proof, and variance.
- 480. — Presumptions and burden of proof.
 - (1). In general.
 - (2). Existence of defect or happening of injury.
 - (2.1). — In general.
 - (3). — Rebutting presumption.
 - (4). Cause of injury.
 - (5). Defects in and management of engines.
 - (6). Contributory negligence.
- 481. — Admissibility of evidence.
 - (1). In general.
 - (2). Similar facts and transactions.
 - (2.1). — In general.
 - (3). — Where particular engine causing injury is not known or identified.
 - (4). — As showing defects in or mismanagement of engines.
 - (5). — As showing probable cause and possibility of prevention of injury.
 - (6). Precautions against recurrence of injury.
 - (7). Competency of employees.
 - (8). Defects in and management of engines.
- 482. — Sufficiency of evidence.
 - (1). In general.
 - (2). Origin or cause of fire in general.
 - (3). Setting out and preventing spread of fire.
 - (4). Defects in and management of engines.
 - (5). Combustibles on railroad property.
- 483. — Damages.

323. RECEIVERS**X. OPERATION.**(Cont'd)

484. — Questions for jury.
- (1). In general.
 - (2). Happening of injury and rebutting presumption of negligence.
 - (3). Origin of fire.
 - (4). Defects in and management of engines.
 - (5). Combustibles on railroad property.
 - (6). Contributory negligence.
485. — Instructions.
- (1). In general.
 - (2). Conformity to pleadings and issues.
 - (3). Presumptions and burden of proof.
 - (4). Origin of fire.
 - (5). Setting out and preventing spread of fire.
 - (6). Defects in and management of engines.
 - (7). Combustibles on railroad property.
 - (8). Contributory negligence.
 - (9). Proximate cause of injury.
486. — Verdict and findings.
487. — Judgment.

322. REAL ACTIONS**SUBJECTS INCLUDED**

Actions for recovery of specific real property, founded on right of property therein, without or with incidental recovery of damages for detention or profits, etc., thereof

More particularly, writs of right, writs of formedon, statutory petitory actions, etc.

Nature and scope of the remedy in general

Grounds of such actions and defenses thereto

By and against whom and as to what property they may be maintained

Procedure therein

Incidental recovery for use and occupation, profits, damages, improvements, etc.

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Damages for wrongful entry upon or injury to real property, actions for, see TRESPASS

Equitable remedy to quiet title, see QUIETING TITLE

Possession—

Mere right of, actions founded on, see ENTRY, WRIT OF, FORCIBLE ENTRY AND DETAINER

Recovery of possession merely and damages for detention thereof, see EJECTMENT, TRESPASS TO TRY TITLE

Writ of possession, see ASSISTANCE, WRIT OF

1. Writ of right.
 - 1.1. — In general.
2. — Right of action and defenses.
3. — Proceedings.
4. Writ of formedon.
5. Statutory remedies in general.
6. Petitory actions.
 - 6.1. — In general.
7. — Right of action and defenses.
 - (5). In general.
 - (1). Nature and scope of remedy.
 - (2). Title and right to maintain.
 - (3). Defenses.
8. — Proceedings.
 - (1). In general.
 - (2). Pleading and evidence.
 - (3). Judgment and review.
 - (4). Damages.
 - (5). Improvements.

323. RECEIVERS**SUBJECTS INCLUDED**

Care, management, and disposition of property, the subject of or involved in civil actions, by persons specially appointed by the court, for the purpose either of preservation of the property pending the litigation or of execution of the judgment therein

Nature and scope of the remedy in general

323. RECEIVERS

In what cases and for what purposes and as to what property it is allowed

Grounds of appointment, and jurisdiction over and proceedings to obtain appointment of receivers

Appointment and qualification of receivers, extension of receiverships, and effect thereof

Rights, duties, powers, and liabilities of receivers

Control, management, and disposition of property by them, their relation to the court, and actions by and against them

Dissolution of receiverships, removal, resignation, or discharge of receivers, and accounting by them

Liabilities on and enforcement of securities given to obtain, dissolve, etc., receiverships

Liabilities for wrongful procuring of appointment of receivers

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Corporation receiverships, see CORPORATIONS AND BUSINESS ORGANIZATIONS, FINANCE, BANKING, AND CREDIT, and other specific topics

Jurisdiction of particular courts in regard to receiverships, see COURTS and FEDERAL COURTS

Other remedies, receiverships merely incident to, see CREDITORS' REMEDIES and other specific topics

Particular forms of relief, receiverships in actions or proceedings for, see MORTGAGES AND DEEDS OF TRUST, PARTNERSHIP, and other specific topics

Particular kinds of property, receiverships affecting, see MINES AND MINERALS and other specific topics

Sequestration of property subject to conflicting claims, or to liens or other special rights, to preserve it during litigation, or to enforce orders or judgments, see SEQUESTRATION

I. NATURE AND GROUNDS OF RECEIVERSHIP, ¶1-28.

(A) NATURE AND SUBJECTS OF REMEDY, ¶1-11.

(B) GROUNDS OF APPOINTMENT OF RECEIVER, ¶12-28.

II. APPOINTMENT, QUALIFICATION, AND TENURE, ¶29-64.

III. TITLE TO AND POSSESSION OF PROPERTY, ¶65-80.

IV. MANAGEMENT AND DISPOSITION OF PROPERTY, ¶81-146.

(A) ADMINISTRATION IN GENERAL, ¶81-109.

(B) SUPERVISION AND INSTRUCTIONS OF COURT, ¶110-116.

(C) RECEIVER'S CERTIFICATES, ¶117-129.

(D) SALE AND CONVEYANCE OR REDELIVERY OF PROPERTY, ¶130-146.

V. ALLOWANCE AND PAYMENT OF CLAIMS, ¶147-163.

VI. ACTIONS, ¶164-189.

VII. ACCOUNTING AND COMPENSATION, ¶190-204.

VIII. FOREIGN AND ANCILLARY RECEIVERSHIPS, ¶205-211.

IX. LIABILITIES ON BONDS OR UNDERTAKINGS, ¶212-218.

X. WRONGFUL RECEIVERSHIPS, ¶219-220.

I. NATURE AND GROUNDS OF RECEIVERSHIP.

(A) NATURE AND SUBJECTS OF REMEDY.

1. Nature and purpose of remedy.
2. Constitutional and statutory provisions.
3. Remedy provisional or incidental to other relief.
4. Actions and proceedings in which receiver may be appointed.
5. Pendency and condition of cause.
6. Existence of and resort to other remedy.
7. Appointment of receiver incident to injunction.
8. Discretion of court.
9. Persons entitled to appointment of receiver.
10. Persons as against whom receiver may be appointed.
11. Property which may be subject of receivership.

(B) GROUNDS OF APPOINTMENT OF RECEIVER.

12. Right or interest in property requiring protection.
13. Fraud in obtaining possession of property.
14. Preservation and protection of property in general.

323. RECEIVERS**I. NATURE AND GROUNDS OF RECEIVERSHIP.(Cont'd)**

15. Preservation of property pending litigation.
16. — In general.
17. — Incapacity of party entitled to possession.
18. — Controversy between parties equally entitled to possession.
19. — Insolvency or misconduct of party in possession as against claimant.
20. Security for payment of demand.
21. — In general.
22. — Prevention of removal or other disposition of property.
23. — Pendency of appeal or other proceeding for review.
24. Performance or enforcement of judgment.
25. Defenses and grounds of opposition.
26. — In general.
27. — Title or possession of defendant or third person.
28. — Injury or inconvenience to defendant or others.

II. APPOINTMENT, QUALIFICATION, AND TENURE.

29. Jurisdiction and authority of court or judge.
 - (1). In general.
 - (2). Property or owner thereof beyond jurisdiction of court.
30. Appointment on court's own motion.
31. Appointment on consent of parties.
32. Form and requisites of application for appointment in general.
33. Time for application.
34. Parties on application.
35. Notice of application.
 - (.5). In general.
 - (1). Necessity.
 - (2). Requisites and sufficiency and service.
 - (3). Defects, objections, and waiver.
36. Use and effect of pleadings on application.
37. Affidavits for appointment.
38. Counter affidavits and other evidence.
39. Scope of inquiry and questions considered on application.

II. APPOINTMENT, QUALIFICATION, AND TENURE.(Cont'd)

40. Hearing and determination of application.
41. Conditions on granting application.
42. — In general.
43. — Priority of liens and claims.
44. Conditions on refusing application.
45. — In general.
46. — Giving security.
47. Order on application.
48. Eligibility for appointment.
49. Selection of receiver.
50. Acceptance of appointment.
51. Bond.
52. Extension of receivership and subsequent appointments in other actions or proceedings.
53. Continuance of interlocutory receivership by final judgment.
54. Operation and effect of order in general.
55. Effect of irregular or invalid appointment.
56. Persons who may question validity of appointment.
57. Estoppel and waiver.
58. Revocation or modification of order of appointment.
59. Collateral attack on appointment.
60. Duration and termination of receivership in general.
61. Resignation or disqualification.
62. Removal.
63. Death.
64. Appointment of successor.

III. TITLE TO AND POSSESSION OF PROPERTY.

65. Effect of appointment and qualification of receiver.
66. Assignment and other transfers to receiver.
67. Property vesting in receiver in general.
68. Property fraudulently conveyed.
69. Title or right acquired by receiver in general.
70. Time of vesting of title or right.
71. Nature and right of possession of receiver.
72. Remedies and proceedings of receiver to obtain possession.

323. RECEIVERS**III. TITLE TO AND POSSESSION
OF PROPERTY.(Cont'd)**

- 73. Protection of possession of receiver in general.
- 74. Interference with possession of receiver, and punishment thereof.
- 75. Set-offs and counterclaims against receiver.
- 76. Equities of third persons in general.
- 77. Liens on and adverse claims to property.
 - (1). In general.
 - (2). Mortgages.
 - (3). Judgments.
 - (4). Pledge.
 - (5). Attachment and execution.
 - (6). Mechanics' liens.
- 78. Remedies to establish or enforce liens or claims.
- 79. Remedies of general creditors as against property.
- 80. Effect of appointment, and rights, of receiver, as to pending actions.

**IV. MANAGEMENT AND DISPOSITION
OF PROPERTY.****(A) ADMINISTRATION IN GENERAL.**

- 81. Representation by receiver of court and of parties.
- 82. Authority of receiver in general.
- 83. Discretion of receiver.
- 84. Delegation of powers.
- 85. Appraisal and inventory of property.
- 86. Custody, use, and care of property.
- 87. Collection of assets.
- 88. Determination of controversies.
- 89. Incumbrances and charges on property.
- 90. Assumption and performance of obligations.
- 91. Acceptance of lease.
- 92. Continuance and conduct of business.
- 93. Repairs and improvements.
- 94. Completion and extension of works.
- 95. Contracts of receiver in general.
- 96. Employees of receiver.
- 97. Loans and advances to receiver, and securities therefor.
- 98. Disposition of property, funds, and income, in general.
- 99. Expenditures.
 - (1). In general.

**IV. MANAGEMENT AND DISPOSITION
OF PROPERTY.(Cont'd)**

- (2). Counsel fees.
- (3). Taxes.
- 100. Investments and deposits.
- 101. Interest on funds.
- 102. Accounts, statements, and reports of receiver.
- 103. Individual interest in transactions.
- 104. Fraud or other misconduct of receiver.
- 105. Loss of property.
- 106. Reimbursement and indemnity to receiver.
- 107. Joint receivers.
- 108. Successive receivers.
- 109. Representatives of deceased receivers.
- (B) SUPERVISION AND INSTRUCTIONS OF COURT.**
- 110. Jurisdiction to instruct and control receiver in general.
- 111. Instructions or authority to receiver to act.
 - 111.1. — In general.
- 112. — Subject-matter.
- 113. — Proceedings to obtain.
- 114. — Operation and effect.
- 115. Confirmation of acts or contracts of receiver.
- 116. Annulment or modification of acts or contracts of receiver.
- (C) RECEIVER'S CERTIFICATES.**
- 117. Power to authorize issue.
- 118. Purposes of issue.
- 119. Necessity and grounds for issue.
- 120. Consent of parties interested.
- 121. Proceedings preliminary to issue.
- 122. Interest on certificates.
- 123. Sale or other disposition.
- 124. Execution, issuance, and delivery.
- 125. Validity in general.
- 126. Negotiability and transfer.
- 127. Rights and remedies of holders in general.
- 128. Lien and priorities.
- 129. Payment.
- (D) SALE AND CONVEYANCE OR REDELIVERY OF PROPERTY.**
- 130. Power to authorize sale by receiver.

323. RECEIVERS**IV. MANAGEMENT AND DISPOSITION
OF PROPERTY.(Cont'd)**

- 131. Necessity and grounds for sale.
- 132. Authority and duty of receiver to sell in general.
- 133. Proceedings to procure and order for sale.
- 134. Notice of sale.
- 135. Time, manner, and terms of sale.
- 136. Bids and payment of or failure to comply with bid.
- 137. Report and confirmation of sale.
- 138. Validity of sale in general.
- 139. Opening or vacating sale.
- 140. Collateral attack on sale.
- 141. Operation and effect of sale in general.
- 142. Title and rights of purchasers.
- 143. Liabilities of purchasers.
- 144. Conveyance and delivery to purchaser.
- 145. Proceeds of sale.
- 146. Reconveyance and redelivery of property on termination of receivership.

V. ALLOWANCE AND PAYMENT OF CLAIMS.

- 147. Liabilities of property or funds in hands of receiver.
- 148. Secured claims.
- 149. Presentation and filing of claims.
- 150. Objections to claims and proceedings thereon.
- 151. Allowance or disallowance.
- 152. Priorities in general.
- 153. Taxes.
- 154. Expenses of receivership.
 - (1). In general.
 - (2). Counsel fees.
- 155. Expenses of continuance of business by receiver.
- 156. Priority of unsecured debts, incurred before receivership, to pre-existing liens.
- 157. — In general.
- 158. — Purpose for which debt contracted.
 - (1). In general.
 - (2). Labor, supplies, and materials furnished.
 - (3). Nature and purpose of labor, supplies, and materials.
 - (4). Rentals and traffic and mileage balances.
- 159. — Diversion of income.

**V. ALLOWANCE AND PAYMENT
OF CLAIMS.(Cont'd)**

- 160. — Time of incurring debt.
- 161. — Charge against income or corpus.
- 162. Priorities of liens and incumbrances.
- 163. Payment.

VI. ACTIONS.

- 164. Capacity to sue and be sued in general.
- 165. Remedies of receiver in receivership proceeding.
- 166. Remedies against receiver in receivership proceeding.
- 167. Rights of action by receivers.
- 168. Rights of action against receivers.
- 169. Defenses against receivers.
- 170. Defenses by receivers.
- 171. Set-off and counterclaim.
- 172. Conditions precedent in general.
- 173. Leave of court to receiver to sue.
- 174. Leave of court to sue receiver.
 - (.5). In general.
 - (1). Necessity.
 - (2). Effect of failure to obtain leave.
 - (3). Waiver.
 - (4). Ground for grant or refusal, and discretion of court.
 - (5). Proceedings, and grant or refusal of leave.
- 175. Nature and form of remedy by action.
- 176. Jurisdiction.
- 177. Venue.
- 178. Parties.
- 179. Joinder or intervention of receiver in actions by others.
- 180. Process and appearance.
- 180.5. Dismissal and nonsuit.
- 181. Attachment and garnishment.
- 182. Injunction and stay.
- 183. Pleading.
- 184. Evidence.
- 185. Trial.
- 186. Judgment.
- 187. Execution and enforcement of judgment.
- 188. Appeal and error.
- 189. Costs.

VII. ACCOUNTING AND COMPENSATION.

- 190. Duty to account in general.

323. RECEIVERS**VII. ACCOUNTING AND
COMPENSATION.(Cont'd)**

- 191. Proceedings for accounting.
- 192. Charges.
- 193. Credits in general.
- 194. Counsel fees and costs.
- 195. Compensation for services.
- 196. — In general.
- 197. — Nature of services.
- 198. — Amount.
 - (1). In general.
 - (2). Discretion of court.
- 199. Allowance and payment or recovery of compensation and expenses.
- 200. Liabilities of parties, property, or funds for compensation and expenses.
- 201. Form and requisites of account.
- 202. Objections to account and proceedings thereon.
- 203. Settlement of account.
- 204. Discharge of receiver.

**VIII. FOREIGN AND ANCILLARY
RECEIVERSHIPS.**

- 205. Foreign appointment.
- 206. Ancillary appointment.
- 207. Title to and possession of property.
- 208. Management and disposition of property.
- 209. Rights and remedies of creditors.
- 210. Actions by or against foreign receivers.
- 211. Accounting.

**IX. LIABILITIES ON BONDS
OR UNDERTAKINGS.**

- 212. Nature and extent of liability.
- 213. Discharge of sureties.
- 214. Breach or fulfillment of condition.
- 215. Necessity of accounting and default by receiver.
- 216. Conclusiveness of adjudication against receiver.
- 217. Remedies in receivership proceeding.
- 218. Actions.

X. WRONGFUL RECEIVERSHIPS.

- 219. Nature and grounds of liability.
- 220. Actions.

324. RECEIVING STOLEN GOODS**SUBJECTS INCLUDED**

Fraudulently receiving, concealing or transporting property stolen, embezzled, or obtained by false pretenses, etc., by another, knowing it to have been so stolen, embezzled, or obtained

Nature and elements as a distinct crime of such receiving, concealing, or transporting

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Accessories, liabilities of persons receiving such goods as, see LARCENY and other specific topics

- 1. Nature and elements in general.
- 2. Property and stealing thereof.
- 3. Knowledge of theft and intent.
- 4. Receipt, possession, and concealment of property.
- 5. Defenses.
- 6. Persons liable.
- 7. Indictment or information.
 - (1). In general.
 - (2). Knowledge and intent.
 - (3). Description of thief or person from whom received.
 - (4). Allegations as to theft.
 - (5). Description, value, and ownership, or possession of property.
 - (6). Issues, proof, and variance.
- 8. Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency in general.
 - (4). Knowledge of theft and intent.
- 9. Trial and review.
 - (.5). In general.
 - (1). Questions for jury.
 - (2). Instructions.
 - (3). Verdict.
 - (4). Review.
- 10. Sentence and punishment.

326. RECORDS**325. RECOGNIZANCES****SUBJECTS INCLUDED**

Obligations of record, entered into before a court or officer duly authorized, as security for performance of some particular act required in a judicial proceeding

Nature, requisites, validity, construction, operation, and effect of such instruments in general

Breach and forfeiture of recognizances

Proceedings to enforce liabilities of sureties

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Particular proceedings, recognizances incident to, see **BAIL, PROTECTION OF ENDANGERED PERSONS, APPEAL AND ERROR, COSTS**, and other specific topics

1. Nature and essentials in general.
2. Requisites and validity.
3. Construction and operation.
4. Discharge of sureties.
5. Breach or fulfillment of condition.
6. Extent of liability.
7. Proceedings for fixing liability or forfeiture.
8. Relief from liability or forfeiture.
9. Entry of judgment on default or forfeiture.
10. Summary remedies for enforcement.
11. Scire facias.
12. Actions.

326. RECORDS**SUBJECTS INCLUDED**

Public memorials in writing of acts, transactions and proceedings, and instruments in writing or copies thereof, preserved as evidence of the matters to which they relate

More particularly, such records affecting title to or interests in property and registration of titles to land

Nature and requisites of such records, deposit and reception of instruments for filing or record, and custody and care thereof

Amendment of defects therein

Access to and use of such records

Supplying lost records and establishing titles after loss or destruction of records thereof

Offenses of altering, defacing, mutilating, or destroying public records

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Constructive notice to purchasers, mortgagees, etc., operation of record as, see **MORTGAGES AND DEEDS OF TRUST, VENDOR AND PURCHASER**

Court records, making, custody, amendment, and operation in general, see **COURTS**

Particular instruments, and effect of record or of failure to record in general, see **DEEDS, MORTGAGES AND DEEDS OF TRUST**, and other specific topics

Particular judicial proceedings, records of, see **EVIDENCE, JUDGMENT**, and topics relating to particular proceedings

Privileged communications and confidential relations, see **PRIVILEGED COMMUNICATIONS AND CONFIDENTIALITY**

Recording officers, see **REGISTERS OF DEEDS**

Transcripts and abstracts of records of judicial proceedings for purposes of review thereof, see **APPEAL AND ERROR** and other specific topics

I. IN GENERAL, ¶1-29.

II. PUBLIC ACCESS, ¶30-68.

(A) IN GENERAL, ¶30-49.

(B) GENERAL STATUTORY DISCLOSURE REQUIREMENTS, ¶50-68.

I. IN GENERAL.

1. Nature and essentials in general.
2. Statutory provisions.
3. Making and requisites in general.
4. Deposit and reception of written instruments.
5. Payment of fees.
6. Recording written instruments.
7. Filing written instruments or copies thereof.
8. Index.
9. Registration of titles to land.

326. RECORDS**I. IN GENERAL.(Cont'd)**

- (1). In general.
- (2). Statutory provisions.
- (3). Purpose of registration.
- (4). Title or interest to support.
- (5). Jurisdiction and power of court.
- (6). Parties.
- (7). Process.
- (8). Pleadings.
- (9). Evidence.
- (10). Examination of titles and report.
- (10.5). Judgment.
- (11). Opening or vacating default or decree of registration.
- (12). Appeal and error.
- (13). Conclusiveness of registration.
- (13.1). Matters affecting registered title.
- (13.5). Costs.
10. Defects, amendment and correction.
11. Cancellation or surrender of records.
12. Effect of alterations.
13. Custody, care, and use in general.
15. Making and use of copies.
16. Taking records or instruments from files, and use thereof.
17. Supplying or restoring records or instruments lost or destroyed.
 - (.5). In general.
 - (1). Nature, grounds, and rights of restoration.
 - (2). Form of remedy, jurisdiction, and power of court.
 - (4). Pleading.
 - (5). Notice of motion or application.
 - (6). Affidavit of loss or destruction.
 - (7). Evidence of existence, contents, and loss.
 - (8). Trial, judgment, and review.
 - (9). Operation and effect.
18. Establishment of title to land after loss or destruction of records thereof.
 - (.5). In general.
 - (1). Right of action.
 - (2). Nature and form of action or proceeding.
 - (3). Re-recording of original.
 - (4). Jurisdiction.
 - (5). Time to proceed and laches.

I. IN GENERAL.(Cont'd)

- (6). Parties and process.
- (8). Pleading.
- (9). Evidence.
- (9.5). Questions for jury.
- (10). Findings and decree.
19. Construction and operation in general.
20. Conclusiveness of record.
21. Removal or secreting.
22. Mutilation or destruction; expungement.

II. PUBLIC ACCESS.

Excludes criminal and arrest records, see CRIMINAL LAW §1226, juvenile records, see INFANTS XVIII, mental health records, see MENTAL HEALTH §21, income tax or sales tax returns, see INTERNAL REVENUE §4482 and TAXATION §3539, 3788, requirements as to publication by administrative agencies, see ADMINISTRATIVE LAW AND PROCEDURE §366, 407-409, 503-505 and privilege, see PRIVILEGED COMMUNICATIONS AND CONFIDENTIALITY VI.

(A) IN GENERAL.

30. Access to records or files in general.
31. Regulations limiting access; offenses.
32. Court records.
33. Persons entitled to disclosure; interest or purpose.
34. Proceedings for access.
35. Proceedings to prevent disclosure; injunction.

(B) GENERAL STATUTORY DISCLOSURE REQUIREMENTS.

50. In general; freedom of information laws in general.
51. Agencies or custodians affected.
52. Persons entitled to disclosure; interest or purpose.
53. Matters subject to disclosure; exemptions.
54. — In general.
55. — Exemptions or prohibitions under other laws.
56. — Classified secrets.
57. — Internal memoranda or letters; executive privilege.
58. — Personal privacy considerations in general; personnel matters.
59. — Trade secrets and commercial or financial information.
60. — Investigatory or law enforcement records.

327. REFERENCE**II. PUBLIC ACCESS.**(Cont'd)

61. Proceedings for disclosure.
62. — In general; request and compliance.
63. — Judicial enforcement in general.
64. — Discretion and equitable considerations; balancing interests.
65. — Evidence and burden of proof.
66. — In camera inspection; excision or deletion.
67. — Findings and order; injunctive relief.
68. — Costs and fees.

327. REFERENCE**SUBJECTS INCLUDED**

Judicial examination and determination of issues and questions arising in civil cases in general by persons especially selected for the purpose

Nature of the proceeding, power to refer causes for trial, and what causes may be so referred, by consent of parties or compulsorily

Grounds for ordering references, and proceedings therefor

Appointment, qualification, rights, powers, and duties of referees, and control over them exercised by courts

Trials or hearings before referees

Reports and findings of referees, objections and exceptions thereto, setting aside such reports or findings, and recommitting cause for further report

Operation and effect of report and findings in general

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Arbitrators chosen by parties, submissions of controversies to, see **ALTERNATIVE DISPUTE RESOLUTION, LABOR AND EMPLOYMENT**

Commissioners of courts, see **COURT COMMISSIONERS**

Equity, references to masters in equity, auditors, etc., to inform the court, see **EQUITY** and topics relating to particular proceedings

Jury trial, right to and waiver thereof in general, see **JURY**

Particular forms or classes of action, references in, see **DIVORCE, ACCOUNT, ACTION ON**, and other specific topics

Submission of controversies to courts on statements of facts agreed upon, without action, see **SUBMISSION OF CONTROVERSY**

I. NATURE, GROUNDS, AND ORDER OF REFERENCE, ¶1-34.**II. REFEREES AND PROCEEDINGS, ¶35-77.****III. REPORT AND FINDINGS, ¶78-107.****I. NATURE, GROUNDS, AND ORDER OF REFERENCE.**

1. Nature and purpose of remedy.
2. Constitutional and statutory provisions.
3. Matters subject to reference in general.
4. Issues and questions which may be referred on consent.
5. Compulsory reference for trial of issues.
 - 5.1. — In general.
6. — Power to refer in general.
7. — Nature of cause or of issues.
 - (1). In general.
 - (2). Actions or issues involving fraud.
 - (3). Equitable actions or issues.
 - (4). Tort or contract.
8. — Examination of account or numerous items.
 - (1). In general.
 - (2). What is an account.
 - (3). What is a long account.
 - (4). What is examination of long account.
 - (5). Numerous items, but only one issue.
 - (6). Scope and effect of pleadings.
 - (7). Showing necessity for examination.
 - (8). Account only collaterally involved.
9. — Difficult questions of law.
10. — Part of issues.
11. — Counterclaim or cross-action.

327. REFERENCE**I. NATURE, GROUNDS, AND ORDER
OF REFERENCE.(Cont'd)**

12. Compulsory reference of incidental questions and matters.
- 12.1. — In general.
13. — Power to refer in general.
14. — Questions of fact on motions or other proceedings.
15. — Information of court.
16. — Taking and report of testimony.
17. — Taking account after interlocutory or final judgment.
18. Condition of cause and time for application.
19. Right to reference in general.
20. Discretion of court.
21. Successive applications.
22. Admissions to prevent reference.
23. Parties as between whom reference may be ordered.
24. Consent to reference.
25. Reference on court's own motion.
26. Jurisdiction and authority to order reference.
27. Form and requisites of application, and proceedings thereon.
28. Conditions on granting or refusing reference.
29. Order on application.
30. Modification of order.
31. Vacating or setting aside order.
32. Death of party.
33. Operation and effect of reference.
34. Objections and exceptions to order.

II. REFEREES AND PROCEEDINGS.

35. Authority to appoint in general.
36. Number of referees.
37. Eligibility and qualifications.
38. Selection.
39. — In general.
40. — Consent of parties.
41. Objections to referee.
42. Oath.
43. Failure to qualify or act.
44. Resignation or disqualification.
45. Removal.
46. Death of referee.
47. Nature and scope of authority in general.

II. REFEREES AND PROCEEDINGS.(Cont'd)

48. Effect of provisions of order of reference.
49. Effect of provisions of interlocutory or final judgment or decree.
50. Supervision and control by court.
51. Mode and course of proceeding in general.
52. Proceedings before several referees.
53. Place of trial or hearing.
54. Time of trial or hearing.
55. Notice of trial or hearing.
56. Appearance and participation of parties in proceedings.
57. Adjournments.
58. Pleadings and amendments.
59. Motions and other incidental proceedings before referee.
60. Dismissal of action or proceeding before hearing.
61. Conduct of trial or hearing in general.
62. Reception of evidence.
63. — In general.
64. — Reopening case for further evidence.
65. — Objections and exceptions.
66. — Effect of error in admission of evidence.
67. — Effect of error in exclusion of evidence.
- 67.5. Rulings on weight and sufficiency of evidence.
68. — In general.
69. — Dismissal or nonsuit.
70. Rulings on questions of law.
71. Examination of witnesses for purpose of report of testimony.
72. Taking and stating account.
73. Decision or opinion in general.
74. Opening or setting aside default.
75. Allowance by referee of rehearing.
- 75.5. Termination of authority.
76. Compensation of referee.
 - (1). In general.
 - (2). Stipulations and agreements.
 - (3). Persons liable and apportionment.
 - (4). Amount, items, and computation.
 - (5). Payment and enforcement thereof.
77. Liabilities of referee.

328. REFORMATION OF INSTRUMENTS**III. REPORT AND FINDINGS.**

- 78. Duty to make report in general.
- 79. Time for report.
- 80. Effect of delay in making report.
- 81. Proceedings to compel report.
- 82. Making and form of report.
- 83. Requisites and sufficiency of report in general.
- 84. Findings of fact and conclusions of law.
- 84.1. — In general.
- 85. — Duty to make.
- 86. — Facts and conclusions to be found.
- 87. — Requests for findings.
- 88. — Making and form.
- 89. — Requisites and sufficiency.
- 90. — Failure to find on particular questions.
- 91. — Defects and errors.
- 92. — Amendment or correction.
- 93. — Additional findings.
- 94. Report of evidence with decision or findings.
- 95. Report on reference to take testimony.
- 96. Report on reference to take account.
- 97. Amended and supplemental report.
- 98. Filing and record.
- 99. Operation and effect.
 - (1). In general.
 - (2). Conclusiveness in general.
 - (3). Conclusions of law.
 - (4). Findings of fact.
 - (5). Agreement of parties.
 - (6). Report as evidence.
- 100. Objections and exceptions, and hearing thereof in general.
 - (5). In general.
 - (1). Necessity of objection or exception.
 - (2). Nature and scope of exceptions and objections in general.
 - (3). Time for excepting.
 - (4). Requisites and sufficiency of objections and exceptions.
 - (5). Additional or amended exceptions.
 - (6). Hearing and determination.
 - (7). Failure to object or except, and waiver of objections.
- 101. Recommittal.

III. REPORT AND FINDINGS.(Cont'd)

- (5). In general.
- (1). Jurisdiction and power to recommit.
- (2). Discretion of court.
- (3). Nature and scope of remedy.
- (4). Grounds for recommittal.
- (5). Motion for recommittal.
- (6). Order of recommittal.
- (7). Proceedings by referees after recommittal.
- (8). Report after recommittal.
- 102. Confirmation.
 - (1). In general.
 - (2). Necessity for confirmation.
 - (3). Time for confirmation.
 - (4). Proceedings.
 - (5). Effect of confirmation.
- 103. Setting aside.
 - (1). In general.
 - (2). Grounds.
- 104. Appointment of new referee.
- 105. Submission of issues to jury.
- 106. Different decision or findings by court.
- 107. Review on motion in trial court.

328. REFORMATION OF INSTRUMENTS**SUBJECTS INCLUDED**

Actions for correction of instruments in writing which fail to express the real intention of the parties thereto, to conform to such intention

Nature and scope of the remedy in general

What instruments may be so reformed

Grounds of such actions and defenses thereto

Jurisdiction to decree such reformation and proceedings therefor

Incidental or alternative relief

Judgments or decrees and operation and effect thereof, and costs in actions for such reformation

328. REFORMATION OF INSTRUMENTS**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Alteration by persons of instruments in writing, see **ALTERATION OF INSTRUMENTS**

Cancellation, surrender, etc., of instruments, actions for, see **CANCELLATION OF INSTRUMENTS**

Employee Retirement Income Security Act, see **LABOR AND EMPLOYMENT**

Insurance policies, see **INSURANCE XIII(K)**

Mistake, fraud, etc., as grounds of invalidity of conveyances or contracts or as defenses to actions thereon, see **CONTRACTS, DEEDS**, and topics relating to particular classes of conveyances and contracts

Pension and benefit plans, see **LABOR AND EMPLOYMENT**

Tax deeds, see **TAXATION**

Trusts, see **TRUSTS**

Usurious contracts and transactions, see **USURY**

Wills, see **WILLS**

I. RIGHT OF ACTION AND DEFENSES,
⌚1-29.

II. PROCEEDINGS AND RELIEF,
⌚30-51.

I. RIGHT OF ACTION AND DEFENSES.

1. Nature and scope of remedy.
2. Right to, and necessity of, reformation in general.
3. Inadequacy of remedy at law.
4. Discretion of court.
5. Instruments which may be reformed.
6. — In general.
7. — Invalidity of instrument.
8. — Voluntary conveyances.
9. — Executed contracts.
10. Matters subject to reformation.
11. — In general.
12. — Defective execution.
13. — Matter of description.
 - (1). In general.
 - (2). Erroneous inclusion or failure to make reservation.
 - (3). Omission of property.
 - (4). Estate or interest in property.
14. — Legal operation and effect.

**I. RIGHT OF ACTION AND
DEFENSES.(Cont'd)**

15. Grounds for reformation.
16. — In general.
17. — Mistake of fact.
 - (1). In general.
 - (2). By scrivener or draftsman.
18. — Mistake of law.
19. — Mutuality of mistake.
 - (1). In general.
 - (2). What mistakes are mutual.
20. — Mistake and fraud.
21. — Fraud.
22. Ratification.
23. Estoppel or waiver.
24. Conditions precedent.
25. Defenses and objections to relief.
26. Persons entitled to reformation.
27. Persons as to whom instruments may be reformed.
28. — In general.
29. — Bona fide purchasers.

II. PROCEEDINGS AND RELIEF.

30. Form of remedy.
31. Jurisdiction and venue.
32. Limitations and laches.
See also LIMITATION OF ACTIONS.
33. Parties.
34. Process and appearance.
35. Pleading.
 - 35.1. — In general.
36. — Bill, complaint, or petition.
 - (1). In general.
 - (2). Allegations as to instrument as made and as intended.
 - (3). Grounds for reformation.
 - (4). Prayer.
37. — Cross-bill, cross-complaint, or counterclaim for reformation.
38. — Plea or answer, and subsequent pleadings.
39. — Demurrer.
40. — Amendments.
41. — Issues, proof, and variance.
42. Evidence.
 - 42.1. — In general.
43. — Presumptions and burden of proof.
44. — Admissibility.

331. RELEASE

II. PROCEEDINGS AND RELIEF.(Cont'd)

45. — Weight and sufficiency.
 - (1). In general.
 - (2). Contracts in general.
 - (3). Contracts to convey land.
 - (4). Deeds.
 - (4.1). — In general.
 - (5). — Property conveyed.
 - (6). — Estate or interest created or conveyed.
 - (7). — Covenants, conditions, restrictions, and reservations.
 - (8). Mortgages and notes.
 - (9). Leases.
 - (10). Trusts.
 - (11). Antenuptial contracts.
 - (12). Partnership agreement.
 - (13). Bonds.
 - (15). Sales.
 - (16). Guaranty.
 - (17). Subscription papers.
 - (18). Releases, receipts, and settlements.
 - (19). Lapse of time as affecting sufficiency of proof.
46. Trial or hearing.
47. Relief awarded.
48. Judgment or decree and enforcement thereof.
49. Appeal.
50. Costs.
51. Effect of reformation.

330. REGISTERS OF DEEDS

SUBJECTS INCLUDED

Public officers authorized to keep records of instruments in writing

Their appointment, qualification and tenure of office, and their rights, powers, duties, and liabilities in general

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Recording of instruments and effect thereof, see RECORDS

1. Nature and creation of office.
2. Appointment, election, qualification, and tenure.
- 2.5. Deputies and assistants.
3. Compensation and fees.
4. Powers and functions.
5. Duties and performance thereof in general.
6. Liabilities for negligence or misconduct.
7. Liabilities on official bonds.

331. RELEASE

SUBJECTS INCLUDED

Relinquishment of a right or claim to the person against whom it is to be exercised or enforced, express or implied, by agreement or act of the parties

Nature, requisites, sufficiency, and effect as satisfaction of such agreements and acts and of instruments of release in writing, under seal or not under seal

Evidence relating thereto

Right to rescind release

Pleading release and proof thereof as a defense

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Agreements between husband and wife, see MARRIAGE AND COHABITATION

Compelling cancellation or surrender of release, see CANCELLATION OF INSTRUMENTS

Conveyances, by way of release, see DEEDS

Discharge of obligations by—

Accord and satisfaction, see ACCORD AND SATISFACTION

Bankrupt or insolvent laws, operation of, see BANKRUPTCY, CREDITORS' REMEDIES ⇌1183

Composition, see CREDITORS' REMEDIES ⇌1182

Compromise or other settlement, see COMPROMISE AND SETTLEMENT

Payment, see PAYMENT and specific topics

331. RELEASE

Dram Shop Act releases, see INTOXICATING LIQUORS

Exculpatory clauses and pre-activity or pre-injury releases in general, see CONTRACTS

Fair Labor Standards Act or Federal Employers Liability Act releases, see LABOR AND EMPLOYMENT

Landlord and tenant as to rent, see LANDLORD AND TENANT

Particular classes of persons—

Releases by, see INFANTS, MENTAL HEALTH, and other specific topics

Releases of persons in representative or fiduciary relations, see GUARDIAN AND WARD, EXECUTORS AND ADMINISTRATORS, and other specific topics

Particular kinds of liability, release from, see BILLS AND NOTES, PRINCIPAL AND SURETY, GUARANTY, and other specific topics

Particular rights and interests in real property, release of, see MORTGAGES AND DEEDS OF TRUST, MECHANICS' LIENS, and other specific topics

Patent infringement claims, see PATENTS

Pre-injury waiver by spectators and participants in athletic events, amusements, theaters, shows, see PUBLIC AMUSEMENT AND ENTERTAINMENT

Wage claims by seamen, see SEAMEN

I. REQUISITES AND VALIDITY, ¶1-24.

II. CONSTRUCTION AND OPERATION, ¶25-40.

III. PROCEEDINGS TO ESTABLISH RELEASE, ¶43-61.

I. REQUISITES AND VALIDITY.

1. Nature and requisites in general.
2. Subject-matter.
4. Capacity and authority to release.
5. Agreements to release.
6. Form and contents of instruments in general.
7. Covenant not to sue as release.
8. Acquittance or receipt as release.
9. Execution.
10. Delivery.
11. Consideration.
- 11.1. — In general.

I. REQUISITES AND VALIDITY.(Cont'd)

12. — Necessity and nature.
 - (1). In general.
 - (2). Release in writing or under seal.
 - (3). Adequacy.
13. — Sufficiency in general.
 - (1). In general.
 - (2). Performance of legal obligation.
 - (3). Payment of disputed claims.
 - (4). Part payment.
 - (5). Promise to give employment.
 - (6). Failure of consideration.
14. — Mutual releases.
15. Reality of assent in general.
16. Mistake.
17. Fraud and misrepresentation.
 - (.5). In general.
 - (1). Indebtedness or liability in general.
 - (2). Damages for injury to person.
18. Duress.
19. Undue influence.
20. Legality of consideration.
21. Ratification.
22. Estoppel or waiver of objections.
23. Effect of invalidity.
24. Right to contest validity.
 - (.5). In general.
 - (1). In action on liability released.
 - (2). Necessity for restoration of consideration.

II. CONSTRUCTION AND OPERATION.

25. General rules of construction.
26. Parties.
27. — In general.
28. — Joint debtors.
 - (1). In general.
 - (2). Operation of statutes.
 - (3). Intention of parties.
 - (4). Reservation of right against co-obligors.
 - (5). Necessity of seal.
29. — Joint wrongdoers.
 - (1). In general.
 - (2). Operation of statutes.
 - (3). Existence of joint liability.
 - (4). Reservation of right against other joint wrongdoers.

332. RELIGIOUS SOCIETIES**II. CONSTRUCTION AND OPERATION.(Cont'd)**

- (5). Necessity of seal.
- 30. Scope and extent in general.
- 31. General release.
- 32. Release of right in or claim to specific property.
- 33. Release of specific indebtedness or liability in general.
- 34. Release of damages for injury to the person.
- 35. Release of damages for injury to property.
- 36. Release of damages for breach of contract.
- 37. Covenant not to sue or execute.
- 38. Operation and effect in general.
- 39. Discharge from liability.
- 40. Release of debt as affecting security.

III. PROCEEDINGS TO ESTABLISH RELEASE.

- 43. Pleading in anticipation of defense.
- 44. Pleading release as defense.
- 44.1. — In general.
- 45. — Necessity.
- 46. — Plea or answer in general.
- 47. — Release after action brought.
- 49. Pleading in avoidance of defense.
- 49.1. — In general.
- 50. — Necessity.
- 51. — Mode and form in general.
- 52. — Allegations of mistake, fraud, duress, or other matters avoiding release.
- 53. Issues, proof, and variance.
- 54. Evidence.
- 54.1. — In general.
- 55. — Presumptions and burden of proof.
- 56. — Admissibility.
- 57. — Weight and sufficiency.
 - (1). In general.
 - (2). Mistake, fraud, or duress.
- 58. Questions for jury.
 - (1). In general.
 - (2). Consideration.
 - (3). Validity in general.
 - (4). Physical or mental capacity.
 - (5). Mistake.
 - (6). Fraud or duress.
- 59. Instructions.

III. PROCEEDINGS TO ESTABLISH RELEASE.(Cont'd)

- 60. Verdict and findings.
- 61. Review.

332. RELIGIOUS SOCIETIES**SUBJECTS INCLUDED**

Bodies, incorporated or unincorporated, formed for purposes of religious worship, instruction, etc.

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Charitable societies, see CHARITIES

Corporations or unincorporated associations in general, matters relating to, see CORPORATIONS AND BUSINESS ORGANIZATIONS, ASSOCIATIONS

Taxation and exemption therefrom, see TAXATION

- 1. Nature and status in general.
- 2. Constitutional provisions.
- 3. Statutory provisions.
- 4. Incorporation and organization.
- 5. Constitutions and rules.
- 6. Public aid.
- 7. Membership in general.
- 8. Meetings and elections.
- 9. Officers and committees of church or society.
- 10. Powers of church or society in general.
- 11. Superior, associated, or representative bodies and officers.
- 12. Ecclesiastical tribunals.
 - (5). In general.
 - (1). Organization and qualifications.
 - (2). Authority and jurisdiction.
 - (3). Limitations.
 - (4). Trial, hearing, or examination of charges.
 - (5). Operation and effect of decisions, laws, and proceedings.
- 13. Legislative regulation.
- 14. Judicial supervision in general.

332. RELIGIOUS SOCIETIES

- 15. Property and funds.
 - 15.1. — In general.
 - 15.2. — Assessment and collection.
- 16. — Capacity to acquire and hold.
- 17. — Mode of acquiring.
- 18. — Title and rights acquired and control and use of property or fund.
- 19. — Mortgage or pledge.
- 20. — Sale and conveyance.
- 21. — Diversion.
- 22. — Effect of change of doctrine or discipline.
- 23. — Effect of division of church or society.
 - (1). In general.
 - (2). What constitutes schism or division, and effect thereof in general.
 - (3). Control, use, and title to property on division.
 - (4). Division or partition of property.
- 24. — Jurisdiction of courts to determine rights of property.
- 25. — Actions to determine rights to property and funds; injunction.
- 26. Pews.
- 27. Ministers.
 - (.5). In general.
 - (1). Ordination, call, employment, or settlement.
 - (2). Termination of office or relation.
 - (3). Action to determine or enforce right to office; injunction.
 - (4). Authority, rights, and privileges.
 - (5). Compensation and collection thereof.
- 28. Religious services and ordinances.
- 29. Contracts and indebtedness.
- 30. Torts.
- 31. Actions by or against societies.
 - (.5). In general.
 - (1). Rights of actions and defenses.
 - (2). Capacity to sue and be sued.
 - (3). Parties.
 - (3.5). Process and appearance.
 - (4). Pleadings.
 - (5). Evidence.
 - (6). Trial.
 - (7). Judgment and enforcement.
 - (8). Costs.

- 32. Insolvency and receivers.
- 33. Reorganization.
- 34. Consolidation.
- 35. Dissolution.

333. REMAINDERS**SUBJECTS INCLUDED**

Nature and incidents of estates limited to take effect after the determination of preceding estates

Rights, powers, and liabilities of remaindermen

Remedies relating thereto

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Creation of such estates, and distinction between vested and contingent remainders, see **DEEDS, WILLS**

Grantors, ulterior estates remaining in, see **REVERSIONS**

Life tenants' duties and liabilities as to remaindermen, see **LIFE ESTATES**

Waste, remedies in general, see **WASTE**

- 1. Nature and incidents in general.
- 2. Requisites and validity.
- 3. — In general.
- 4. — Contingent remainders.
- 4.5. Existence pending continuance of preceding estate.
- 5. Acceleration of remainder.
- 6. Acquisition of remainder by tenant of preceding estate.
- 7. Acquisition of preceding estate by remainderman.
- 8. — In general.
- 9. — Merger.
- 10. Bar or defeat of remainder.
- 11. Rights and liabilities of remainderman as to property in general.
- 12. Remainders in personal property.
- 13. Rights and liabilities of remaindermen as to third persons.
- 14. Sales and conveyances by remaindermen.

334. REMOVAL OF CASES

15. Protection and improvement of property under order of court.
16. Sale of property under order of court.
17. Actions by or against remaindermen.
 - (1). In general.
 - (2). During existence of particular estate.
 - (3). Limitations and laches.
See also LIMITATION OF ACTIONS.
 - (4). Proceedings and judgment.

334. REMOVAL OF CASES**SUBJECTS INCLUDED**

Transfer of cases brought in state courts to courts of the United States

Nature and scope of power to require such transfers in general

Constitutional and statutory provisions relating thereto

Grounds for such transfers

Jurisdiction to make and proceedings to obtain removal of cases

Effect of removal

Remand of or proceedings in case after removal

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Change of venue or place of trial, see **VENUE, CRIMINAL LAW, COURTS** and **FEDERAL COURTS**

Removal of cases from one court to another court of a state, or from one United States court to another, see **COURTS** and **FEDERAL COURTS**

- I. POWER TO REMOVE AND RIGHT OF REMOVAL IN GENERAL, ¶1-17.
- II. ORIGIN, NATURE, AND SUBJECT OF CONTROVERSY, ¶18-25.
- III. CITIZENSHIP OR ALIENAGE OF PARTIES, ¶26-47.
- IIIA. SEPARATE AND INDEPENDENT CLAIMS; SEPARABLE CONTROVERSIES, ¶48-61.

- IV. PREJUDICE, LOCAL INFLUENCE, OR DENIAL OF CIVIL RIGHTS, ¶62-70.
- V. AMOUNT OR VALUE IN CONTROVERSY, ¶71-76.
- VI. PROCEEDINGS TO PROCURE AND EFFECT OF REMOVAL, ¶76.5-99.
- VII. REMAND OR DISMISSAL OF CASE, ¶100-110.
- VIII. PROCEEDINGS IN CASE AFTER REMOVAL, ¶111-120.

I. POWER TO REMOVE AND RIGHT OF REMOVAL IN GENERAL.

1. Nature and source of jurisdiction.
2. Constitutional and statutory provisions.
3. Restrictions by federal or state statutes.
4. Suits at law or in equity.
5. Actions or proceedings ancillary or supplementary to suit in state court.
6. Actions to restrain proceedings in state court.
7. Actions to review or set aside judgment of state court.
8. Existence of actual controversy.
9. Courts from which suits may be removed.
10. Jurisdiction of state court.
11. Original jurisdiction of United States court.
12. Restrictions as to district in which suit might have been brought.
13. Conflicting jurisdiction of state and United States courts.
14. Court to which case may be removed.
15. Condition of case.
16. Nature of right of removal.
17. Waiver of right.

II. ORIGIN, NATURE, AND SUBJECT OF CONTROVERSY.

18. Cases arising under Constitution of United States.
19. Cases arising under laws of United States.
 - (1). In general.
 - (2). Cases under laws relating to public lands.
 - (3). Cases under laws relating to mines and mining rights.
 - (4). Actions relating to public roads.
 - (5). Cases under laws relating to navigation and commerce.
 - (6). Cases under patent laws.

334. REMOVAL OF CASES**II. ORIGIN, NATURE, AND SUBJECT OF CONTROVERSY. (Cont'd)**

- (7). Cases under laws relating to national banks.
- (8). Actions by or against United States corporations in general.
- (9). Actions by or against receivers appointed by United States courts.
- (10). Cases under revenue laws.
- 20. Actions against national banks or receivers thereof.
- 21. Actions against or for acts of United States officers.
- 22. Criminal prosecutions against United States officers or persons acting under or by authority of such officers.
- 23. Nature of controversy.
- 24. Removal of part of case or by one or more coparties.
- 25. Allegations in pleadings.
 - (1). In general.
 - (2). Cases under laws relating to public lands.
 - (3). Cases under laws relating to national banks.
 - (4). Actions by or against United States corporations in general.
 - (5). Actions by or against receivers appointed by United States courts.

III. CITIZENSHIP OR ALIENAGE OF PARTIES.

- 26. Citizenship of parties in general.
- 27. Citizenship or residence of corporations.
- 28. Diversity of citizenship of coplaintiffs and codefendants.
- 29. — In general.
- 30. — Nominal or formal parties.
- 31. — Necessary and unnecessary parties.
- 32. Parties in representative or fiduciary capacity, and legal or equitable interests.
- 33. Assignees.
- 34. — In general.
- 35. — Transfers for purpose of or to prevent removal.
- 36. Improper or collusive joinder of parties.
- 37. Rearrangement of parties.
- 38. Interveners and substituted parties.
- 39. Dismissal as to one or more coparties.

III. CITIZENSHIP OR ALIENAGE OF PARTIES. (Cont'd)

- 40. Controversies between citizens of same state claiming lands under grants of different states.
- 41. Controversies between a state or citizens thereof and foreign states, citizens, or subjects.
- 42. Nature of controversy.
- 43. Time of existence of ground of removal.
- 44. Parties entitled to remove in general.
- 45. Residence of party removing case.
- 46. Removal by one or more coparties.
- 47. Allegations in pleadings.

IIIA. SEPARATE AND INDEPENDENT CLAIMS; SEPARABLE CONTROVERSIES.

- 48. Removability in general.
- 48.1. Claims separate and independent in general.
- 48.2. Controversies separable in general.
- 48.3. Effect of state laws.
- 49. Joint and several suits in general.
- 49.1. Particular suits or proceedings.
 - (1). In general.
 - (2). Contracts.
 - (3). — In general.
 - (4). — Insurance.
 - (5). Torts.
 - (6). — In general.
 - (7). — Negligence.
 - (8). — Concurrent negligence.
- 49.7. Persons in particular relations, suits against.
 - (1). In general.
 - (2). Insured and insurer.
 - (3). Employer and employee.
 - (4). Principal and agent.
 - (5). Principal and surety.
- 50. Liabilities on different grounds.
- 51. Principal and subordinate or incidental controversies or issues.
- 52. Separate interests or claims in subject-matter or part thereof.
- 54. Separate relief against different defendants.
- 55. Separate defenses.
- 56. Set-offs, counterclaims, and cross actions; third party claims.

334. REMOVAL OF CASES**IIIA. SEPARATE AND INDEPENDENT CLAIMS;
SEPARABLE CONTROVERSIES.(Cont'd)**

- 57. Determination of controversy without all parties.
- 58. Removal of whole suit.
- 59. Parties entitled to remove.
- 61. Allegations in pleadings.
 - (1). In general.
 - (2). Plaintiff's pleading as determinative.

**IV. PREJUDICE, LOCAL INFLUENCE,
OR DENIAL OF CIVIL RIGHTS.**

- 62. Nature of prejudice or influence.
- 63. Existence and evidence of prejudice or local influence.
- 64. Remedy by removal to other state court.
- 65. Parties affected by prejudice or local influence.
- 66. Citizenship of parties.
- 67. — In general.
- 68. — Diversity of citizenship.
- 69. Parties entitled to remove for prejudice or local influence.
- 70. Denial of civil rights.

V. AMOUNT OR VALUE IN CONTROVERSY.

- 71. Cases subject to pecuniary limitation.
- 72. Requisite amount or value.
- 73. Matter in dispute.
- 74. Amount or value claimed or involved.
- 75. Allegations and prayers in pleadings.
- 76. Increase or reduction by amendment.

**VI. PROCEEDINGS TO PROCURE
AND EFFECT OF REMOVAL.**

- 76.5. In general.
- 77. Parties to case for purpose of removal.
- 78. Time for taking proceedings.
- 79. — In general.
 - (1). In general.
 - (2). Removal at or before time to answer or plead.
 - (2.1). — In general.
 - (3). — What constitutes an answer or plea.
 - (4). — Time to plead in abatement or other dilatory plea.
 - (5). — Time to demur.

**VI. PROCEEDINGS TO PROCURE AND
EFFECT OF REMOVAL.(Cont'd)**

- (6). — Extension of time to answer or plead.
- (7). — Effect of amendment of declaration or complaint.
- (8). — Effect of demurrer, plea in abatement, or other dilatory plea.
- (9). — Pleading in criminal cause.
- (10). Removal before or at term at which case could be tried and before trial.
- (11). Removal before trial or final hearing.
- 80. — On ground of prejudice or local influence.
- 81. — Effect of delay, and waiver of objections.
- 82. Parties to notice or petition.
- 83. Notice.
- 84. — In general; service on adverse party and filing in state court.
- 85. — Removal on ground of prejudice or local influence.
- 85.5. Certiorari or habeas corpus for removal of cases.
- 86. Notice or petition.
 - (1). In general.
 - (2). Citizenship or residence of parties in general.
 - (3). Citizenship or residence of corporations.
 - (4). Citizenship or residence at time of bringing suit.
 - (5). Separable controversies.
 - (6). Amount in controversy.
 - (7). Time of removal.
 - (8). District to which removal is sought.
 - (9). Signature and verification.
 - (10). Counter affidavits, answer, or reply.
- 87. Petition, affidavits, and other proof of prejudice or local influence.
- 88. Bond.
- 89. Filing notice or petition and bond and effect thereof.
 - (1). In general.

334. REMOVAL OF CASES**VI. PROCEEDINGS TO PROCURE AND EFFECT OF REMOVAL. (Cont'd)**

- (2). Proceedings on filing petition and bond.
- (3). Review.
- 90. Order for removal.
- 91. Determination by United States court as to removal on ground of prejudice or local influence.
- 92. Filing copy of record in United States court.
- 93. Motion to docket case in United States court.
- 94. Defects in proceedings, objections, amendments, and waiver.
- 95. Transfer of jurisdiction and effect of removal in general.
- 96. Proceedings in state court after removal.
- 96.1. — In general.
- 97. — Validity and effect in general.
- 99. Unauthorized or improper removal.

VII. REMAND OR DISMISSAL OF CASE.

- 100. Power and duty to remand.
- 101. Grounds for remand.
- 101.1. — In general.
- 102. — Want of jurisdiction or of cause for removal.
- 103. — Defects in proceedings for removal.
- 104. — Separate determination as to parties not affected by prejudice or local influence.
- 105. Parties entitled to remand.
- 106. Waiver of right to remand.
- 107. Proceedings for remand and review thereof.
- (.5). In general.
- (1). Time for making motion to remand.
- (2). Sufficiency of motion for remand.
- (3). Pleading to jurisdiction or in abatement.
- (4). Hearing and scope of inquiry.
- (5). Effect of record of case and proceedings for removal.
- (6). Amendment of record or of petition for removal to prevent remand.
- (7). Evidence.

VII. REMAND OR DISMISSAL OF CASE. (Cont'd)

- (8). Order for remand.
- (9). Review.
- (10). Remand on appeal or writ of error.
- (11). Costs on remand.
- 108. Dismissal of case.
- 109. Jurisdiction of and proceedings in state court after remand, or dismissal.
- 110. Removal after remand.

VIII. PROCEEDINGS IN CASE AFTER REMOVAL.

- 111. Jurisdiction acquired by United States court in general.
- 112. Removal as waiver of objections to jurisdiction or service of process of state court.
- 113. Exercise of jurisdiction before term at which copy of record is to be filed.
- 114. Effect of proceedings in state court before removal.
- 115. Forms and rules of procedure in general.
- 116. Legal and equitable remedies and proceedings.
- 117. Time to plead and for further proceedings.
- 118. Amendment of pleading and process, and repleading.
- 119. Trial, judgment, and review.
- 120. Costs.

335. REPLEVIN**SUBJECTS INCLUDED**

Actions for recovery of specific personal property by immediate delivery thereof, founded on right of possession

More particularly, writs of replevin and statutory actions of claim and delivery, actions to recover chattels, bail trover, etc.

Nature and scope of the remedy in general

Grounds of such actions and defenses thereto

335. REPLEVIN

By and against whom and as to what property they may be maintained

Procedure therein

Alternative or incidental recovery of damages

Verdict and judgment and enforcement thereof, and costs in such actions

Liabilities on and enforcement of securities given in such actions

Liability for wrongful replevin

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Damages, merely, for injuring, taking, converting or detaining personal property, actions for, see TRESPASS, CONVERSION AND CIVIL THEFT, BAILMENT

Property right, actions founded on, see DETINUE

Summary proceedings to determine and restore previous possession, see POSSESSORY WARRANT

I. RIGHT OF ACTION AND DEFENSES, ¶1-16.

II. JURISDICTION, ¶17-18.

III. VENUE, ¶19.

IV. TIME TO SUE, ¶20.

V. PARTIES, ¶21-24.

VI. PROCEEDINGS FOR TAKING AND REDELIVERY OF PROPERTY, ¶25-54.

VII. PLEADING, ¶55-69.

VIII. EVIDENCE, ¶70-72.

IX. DAMAGES, ¶73-84.

X. TRIAL, ¶85-98.

XI. JUDGMENT, ¶99-115.

XII. REVIEW, ¶116.

XIII. COSTS, ¶117.

XIV. LIABILITIES ON BONDS OR UNDERTAKINGS, ¶118-135.

I. RIGHT OF ACTION AND DEFENSES.

1. Nature and scope of remedy.
2. Statutory provisions and remedies.
3. Property subject to replevin.
4. — In general.
5. — Property taken under execution, attachment, or other process.
6. — Property distrained or impounded.
8. Title and right to possession of plaintiff.
 - (1). In general.
 - (2). Title to property.

I. RIGHT OF ACTION AND DEFENSES.(Cont'd)

- (3). Right to possession and prior possession.
- (4). Title and right to immediate possession.
- (5). Title and right to possession of particular classes of persons.
9. Taking or detention by defendant.
10. Possession of defendant.
- 10.5. Conditions precedent in general.
11. Demand.
 - (.5). In general.
 - (1). Necessity in general.
 - (2). Claim of title and right to possession by defendant and denial of plaintiff's claim.
 - (3). Property wrongfully taken by or in possession of defendant.
 - (4). Requisites and sufficiency of demand.
 - (5). Waiver of demand.
12. Defenses.
 - (1). In general.
 - (2). Set-off and counterclaim.
13. Successive replevins.
14. Cross-replevin.
15. Persons entitled to sue.
16. Persons against whom replevin may be brought.

II. JURISDICTION.

17. Jurisdiction of subject-matter.
18. Jurisdiction of the person.

III. VENUE.

19. In general.

IV. TIME TO SUE.

20. In general.
See also LIMITATION OF ACTIONS.

V. PARTIES.

21. Parties plaintiff.
22. Parties defendant.
23. Intervention.
24. Substitution of parties.

335. REPLEVIN**VI. PROCEEDINGS FOR TAKING AND REDELIVERY OF PROPERTY.**

- 25. Mode and course of proceeding in general.
- 26. Affidavit.
 - 26.1. — In general.
- 27. — Necessity and purpose.
- 28. — Requisites and sufficiency in general.
- 29. — Averments as to title and right to possession.
- 30. — Description and value of property.
- 31. — Averments as to cause of detention.
- 32. — Defects, objections, and amendment.
- 33. Replevin bond or undertaking.
 - (1). In general.
 - (2). Defects, objections, and amendment.
- 33.5. Requisition to officer.
- 34. Writ.
 - 34.1. — In general.
- 35. — Issuance.
- 36. — Requisites and sufficiency in general.
- 37. — Description and value of property.
- 38. — Defects, objections, and amendment.
- 39. Order of replevin.
- 40. Taking property under requisition, writ, or order.
- 41. Service of requisition, writ, or order, and accompanying papers.
- 42. Service of summons or other process in action.
- 43. Appraisement of property.
- 44. Custody and care of property.
- 45. Delivery of property to plaintiff.
- 46. Rights and liabilities of plaintiff in possession of property.
- 47. Proceedings for redelivery of property to defendant.
 - 48. — In general.
 - 49. — Bonds or undertakings.
 - 50. — Redelivery and effect.
- 51. Quashing or vacating requisition, writ, or order.
- 52. Claims of third persons.
- 53. Return of requisition, writ, or order.
- 54. Effect of failure to replevy property.

VII. PLEADING.

- 55. Mode and form of pleading in general.
- 56. Declaration, complaint, or petition.
- 56.1. — In general.
- 57. — Form and requisites in general.
- 58. — Title and right to possession of plaintiff.
- 59. — Description and value of property.
- 60. — Taking and detention by defendant.
- 61. — Demand.
- 62. — Damages.
- 63. Plea, answer, or affidavit of defense, in general.
- 64. Avowry or cognizance and plea thereto.
- 65. Cross-complaint and answer thereto.
- 66. Replication or reply.
- 67. Demurrer.
- 68. Amended and supplemental pleadings.
- 69. Issues, proof, and variance.
 - (.5). In general.
 - (1). Scope of issues.
 - (2). Matters to be proved and failure of proof.
 - (3). Matters admissible under pleadings in general.
 - (4). Matters admissible under general issue or general denial.
 - (5). Variance.

VIII. EVIDENCE.

- 70. Presumptions and burden of proof.
- 71. Admissibility of evidence.
 - (1). In general.
 - (2). Title and right to possession.
- 72. Weight and sufficiency of evidence.

IX. DAMAGES.

- 73. Nature and form of remedy for damages.
- 74. Elements and measure of compensation.
- 75. — In general.
- 76. — Detention of property.
- 77. — Injury to property.
- 78. — Depreciation in value of property.
- 79. — Interest.
- 80. — Costs and expenses of litigation.
- 81. Exemplary damages.
- 82. Amount awarded.
- 83. Damages to defendant in general, and wrongful replevin.

336. REPORTS**IX. DAMAGES.(Cont'd)**

84. Reimbursement of defendant for expenditures.

X. TRIAL.

85. Dismissal or nonsuit before trial.
 86. Scope of inquiry and powers of court.
 87. Mode and conduct of trial.
 88. Questions for jury in general.
 89. Dismissal or nonsuit at trial.
 90. Direction of verdict.
 91. Instructions.
 92. Verdict and findings.
 92.1. — In general.
 93. — Requisites and sufficiency in general.
 94. — Partial recovery.
 95. — Description of property.
 96. — Value of property.
 97. — Damages.
 98. New trial.

XI. JUDGMENT.

99. In general.
 100. Form and requisites in general.
 (1). In general.
 (2). Amendment.
 101. By default.
 102. Partial recovery.
 103. For defendant.
 (1). In general.
 (2). Return of property.
 (3). Recovery of value of property.
 (4). Alternative judgment.
 104. Description of property.
 105. Award of possession or return of property.
 106. Recovery of value of property.
 107. Alternative judgment.
 108. Damages.
 109. Operation and effect.
 110. Performance of judgment for return of property.
 111. Execution and enforcement of judgment.
 112. — In general.
 113. — Delivery of possession of property.
 114. — Making amount awarded for value or damages.

XI. JUDGMENT.(Cont'd)

115. Effect on title to property of satisfaction of judgment for value or damages.

XII. REVIEW.

116. In general.

XIII. COSTS.

117. In general.

XIV. LIABILITIES ON BONDS OR UNDERTAKINGS.

118. Accrual or release of liability by breach or fulfillment of conditions.
 118.1. — In general.
 119. — Replevin bonds or undertakings.
 120. — Redelivery bonds or undertakings.
 121. — Appeal bonds or undertakings.
 122. Rights and remedies of sureties.
 123. Discharge of sureties.
 124. Extent of liability.
 (1). In general.
 (2). Costs, attorney fees, and expenses.
 (3). Measure or amount of damages in general.
 (4). Mitigation or reduction of damages.
 125. Enforcement in replevin proceeding.
 126. Summary remedies.
 127. Actions.
 127.1. — In general.
 128. — Right of action.
 129. — Conditions precedent.
 130. — Defenses.
 131. — Jurisdiction and venue.
 132. — Parties.
 133. — Pleading.
 134. — Evidence.
 135. — Trial, judgment, and review.

336. REPORTS**SUBJECTS INCLUDED**

Publications of judicial decisions for general circulation

336. REPORTS

Right to publish or control publication of such decisions in general

Constitutional and statutory provisions relating to such publication

Public officers charged with the preparation and publication of such reports, and their rights, powers, and duties

Contracts for the publication and sale of such reports, and rights and liabilities arising therefrom

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Opinions, rendition and effect as precedent, see **COURTS**

Referees, masters, commissioners, auditors, etc., reports of, see **REFERENCE, EQUITY**

Stenographers' reports of judicial proceedings, see **COURTS, APPEAL AND ERROR, CRIMINAL LAW**, and other specific topics

1. Right to publish or to control publication.
2. Constitutional and statutory provisions.
3. Reporters.
- 3.5. Printing and publication by public authorities.
4. Contracts for printing and publication.
5. Distribution of copies.
6. Sale of copies.

337. RESCUE**SUBJECTS INCLUDED**

Delivery of and attempts to deliver prisoners or property from lawful custody of officers or other persons, or from places where such prisoners or property are lawfully confined or held, by force or fraud

Nature and elements of the crimes of rescue, pound breach, etc.

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Escapes by prisoners themselves, see **ESCAPE**

Resisting or obstructing execution of process, see **OBSTRUCTING JUSTICE**

1. Nature and elements of offenses.
2. Defenses.
3. Indictment or information.
4. Evidence.
5. Trial and review.

338. REVERSIONS**SUBJECTS INCLUDED**

Nature and incidents of ulterior estates remaining in grantors of particular estates

Rights, powers, and liabilities of reversioners

Remedies relating thereto

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Creation of such estates, see **DEEDS, EDUCATION**, and other specific topics

Reversions after terms of years merely, see **LANDLORD AND TENANT**

1. Nature and incidents in general.
2. Requisites and validity.
3. Acquisition of reversion by tenant of preceding estate.
4. Bar or defeat of reversion.
5. Rights and liabilities of reversioner as to property in general.
6. Reversions in personal property.
- 6.5. Rights and liabilities of reversioners as to third persons.
7. Sales and conveyances by reversioners.
8. Actions by or against reversioners.
 - (1). In general.
 - (2). Limitations and laches.

340. REWARDS**339. REVIEW****SUBJECTS INCLUDED**

Review by superior courts of judicial action of inferior tribunals or officers, or of their own decisions, for causes which arise subsequently or otherwise not ground of appeal, etc., or in proceedings not reviewable by appeal, writ of error, etc., or certiorari

Nature and scope of the remedy by writ of review, or action or other independent proceeding for review, in general

In what cases and as to what proceedings such review is allowed

Grounds for, jurisdiction to grant, and proceedings to obtain such review

Requisites, issuance and effect of writs, etc., of review and proceedings thereon

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Equitable grounds, relief against judgments, see JUDGMENT

Equity courts, bills of review in, see EQUITY
Higher courts, review by for errors or irregularities—

By statutory writ of review in the nature of writ of certiorari, see CERTIORARI

On appeal or writ of error, see APPEAL AND ERROR

Judgments, review of—

On grounds of defense or discharge arising subsequently, see AUDITA QUERELA

On motion in courts in which they were rendered, see JUDGMENT

1. Nature and scope of remedy.
2. Constitutional and statutory provisions.
3. Existence of other remedy.
4. Recourse to or pendency of other proceeding.
5. Discretion as to grant of writ.
6. Successive writs or proceedings.
7. Decisions reviewable.
8. Grounds for review.
9. Right of review.
10. Form of remedy.
11. Jurisdiction.
12. Presentation of objections and exceptions in original proceeding.

13. Parties.
14. Time of taking proceedings.
15. Proceedings to procure writ of review.
- 15.1. — In general.
16. — Petition or other application.
17. — Bond or other security.
18. — Effect of proceedings in general.
19. — Supersedeas or stay.
20. — Allowance or disallowance of writ.
21. Writ of review or other process, and service.
22. Pleading.
23. Evidence.
24. Scope of review and powers of court.
25. Trial or hearing.
26. Judgment.
27. Execution and enforcement of judgment.
28. Appeal or other proceedings for review of decision.
29. Costs.

340. REWARDS**SUBJECTS INCLUDED**

Offers, by private persons or by the government, of a premium or compensation for a special or extraordinary service, not limited to any particular person or persons

Acceptance of such offers and performance of the services, and rights and liabilities of the parties thereupon

Actions for such rewards

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Bounties for enlistment in the public service or engaging in particular industries or performing other acts for the public benefit, see BOUNTIES

Customs laws, rewards under, see CUSTOMS DUTIES

Lost goods, effect on finders' rights of offer of reward for recovery thereof, see ABANDONED AND LOST PROPERTY, II

- 0.5. Nature and requisites in general.

340. REWARDS

1. Statutory provisions and rewards.
2. Offer.
 - 2.1. — In general.
3. — By private persons.
4. — By public authorities.
5. Performance of service and conditions.
 - 5.1. — In general.
7. — Previous knowledge and acceptance of offer.
8. — Sufficiency.
9. Persons who may receive.
10. — In general.
11. — Public officers.
12. Apportionment.
13. Payment.
14. Claims against public authorities and officers.
15. Actions.
 - (1). In general.
 - (2). Pleading.
 - (3). Evidence.
 - (4). Trial.
 - (5). Finding and judgment.
 - (6). Costs.

341. RIOT**SUBJECTS INCLUDED**

Tumultuous disturbance of the public peace by a number of persons mutually assisting one another in the execution of a common purpose by the use of force

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Assemblages of persons for an unlawful purpose which is not carried into execution, see **UNLAWFUL ASSEMBLY**

Cities' or counties' liabilities for injuries by rioters, see **MUNICIPAL CORPORATIONS, COUNTIES**

Fighting in a public place, disturbance of the peace by, see **CRIMINAL LAW** ¶45.15

Insurrection, see **INSURRECTION AND SEDITION**

1. Nature and elements of offenses.
2. Defenses.
3. Persons liable.
4. Preliminary proceedings in prosecution.
5. Indictment or information.
6. Evidence.
7. Trial and review.
8. Sentence and punishment.
9. Suppression of riots.

342. ROBBERY**SUBJECTS INCLUDED**

Taking, with intent to steal, personal property in possession of another, from his person or in his presence, against his will, by force or by putting him in fear

Attempts and assaults with intent to commit such offenses

Nature and elements of the crime of robbery and of degrees thereof

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Larceny from the person, without force or intimidation, see **LARCENY**

Mail robbery, see **POSTAL SERVICE**

Threats made with intent to obtain money or other property, see **EXTORTION**

1. Nature and elements in general.
2. Statutory provisions.
3. Intent.
4. Property subject of robbery and ownership and possession thereof.
5. Taking in general.
6. Force.

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- 7. Putting in fear.
- 8. Taking against will of owner or other in possession.
- 9. Taking from person or presence of another.
- 10. Asportation.
- 11. Degrees; armed robbery.
- 12. Attempt.
- 13. Assault with intent to rob.
- 14. Defenses.
- 15. Persons liable.
- 16. Indictment or information.
- 16.1. — In general.
- 17. — Requisites and sufficiency.
 - (1). In general.
 - (2). Intent.
 - (3). Description of property.
 - (4). Value of property.
 - (5). Ownership and possession of property.
 - (6). Taking and asportation.
 - (7). Force and putting in fear.
- 18. — Attempt.
- 19. — Assault with intent to rob.
- 20. — Issues, proof, and variance.
- 21. Evidence in general.
- 22. Presumptions and burden of proof.
- 23. Admissibility of evidence.
 - (1). In general.
 - (2). Circumstances and condition of person robbed.
 - (3). Possession by accused of weapons, tools, or stolen property.
- 24. Weight and sufficiency of evidence.
- 24.10. — In general.
- 24.15. — Degree or classification of offense.
 - (1). In general.
 - (2). First degree; armed robbery.
- 24.20. — Participation in offense.
- 24.25. — Effect of possession of stolen property.
- 24.30. — Attempts.
- 24.35. — Intent.
- 24.40. — Identity of accused.
- 24.45. — Description, value and ownership of property.
- 24.50. — Force and putting in fear.
- 24.55. — Assault with intent to rob.
- 25. Trial.

- 25.1. — In general.
- 26. — Questions for jury.
- 27. — Instructions.
 - (1). In general.
 - (2). Definitions of offense.
 - (3). Intent.
 - (5). Grade or degree of offense.
 - (6). Applicability to issues and evidence.
 - (7). Attempts and assaults with intent to rob.
- 28. — Verdict.
- 30. Sentence and punishment.

343. SALES**SUBJECTS INCLUDED**

Transfers, whether absolute or conditional, of ownership of personal property for a price, especially where transaction is within the scope of Article 2 of the Uniform Commercial Code

Contracts for such transfers, and the rights, obligations, and liabilities of the parties thereto

Warranties, whether express or implied, attendant to such transfers

Remedies relating to such transfers, contracts, and warranties, and actions thereon

Rights and liabilities of parties as to third persons, and actions thereon

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Arbitration of disputes under sales contracts, see **ALTERNATIVE DISPUTE RESOLUTION**

Assignees for benefit of creditors, receivers, etc., sales, see **BANKRUPTCY, CREDITORS' REMEDIES** §1172, **RECEIVERS**, and other specific topics

Auctions, regulation and conduct of sales by, see **AUCTIONS AND AUCTIONEERS**

Bailment, see **BAILMENT**

Barter or exchange, transfers by, see **EXCHANGE OF PROPERTY**

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- Bills of sale as security for debt, see CHATTEL MORTGAGES
- Champertous contracts, sales as, see CHAMPERTY AND MAINTENANCE ¶4(4)
- Chattel mortgages, sales to enforce, see CHATTEL MORTGAGES
- Consignment, bailment for sale, and factorage, see FACTORS
- Fiduciary or representative relations, sales by persons in, see BROKERS, GUARDIAN AND WARD, and other specific topics
- Frauds, statute of, affecting validity of sale, see FRAUDS, STATUTE OF
- Judgments, decrees, and orders of courts, sales under, see JUDICIAL SALES and other specific topics
- Judicial process, sales under, see CREDITORS' REMEDIES and other specific topics
- Leases of personal property, see BAILMENT
- Particular classes of persons, sales by or to, see ALIENS, IMMIGRATION, AND CITIZENSHIP, HUSBAND AND WIFE, INFANTS, MENTAL HEALTH, and other specific topics
- Particular kinds of property, sales of, especially as to questions not governed by Article 2 of the Uniform Commercial Code—
 - Aircraft, see AVIATION ¶14
 - Automobiles, see AUTOMOBILES ¶19
 - Bonds, see BONDS ¶84, 87
 - Businesses and business assets, see CORPORATIONS AND BUSINESS ORGANIZATIONS, PARTNERSHIP
 - Commercial paper, see BILLS AND NOTES ¶216, VIII(C)
 - Copyrights, see COPYRIGHTS AND INTELLECTUAL PROPERTY ¶43
 - Corporate stock and securities, see CORPORATIONS AND BUSINESS ORGANIZATIONS, SECURITIES REGULATION
 - Electricity, see ELECTRICITY ¶11(3)
 - Gas, see GAS ¶13(1), 14(2)
 - Good will, see GOOD WILL ¶4
 - Impounded animals, see ANIMALS ¶106
 - Log or lumber sales, see LOGS AND LOGGING ¶34
 - Minerals, see MINES AND MINERALS ¶92.66, 93.5
 - Patents, see PATENTS VI(C)
 - Real property, see VENDOR AND PURCHASER
 - Rights of action, see ASSIGNMENTS
 - Software, see COPYRIGHTS AND INTELLECTUAL PROPERTY ¶107
 - Tickets, see CARRIERS IV(B), PUBLIC AMUSEMENT AND ENTERTAINMENT ¶68
 - Trademarks, see TRADEMARKS ¶1197
 - Vessels, see SHIPPING ¶23
 - Water, see WATER LAW
- Pledges, sales to enforce, see PLEDGES
- Powers, sales in execution of, see POWERS
- Regulation of sales, see ANTITRUST AND TRADE REGULATION, FOOD, INTOXICATING LIQUORS, and other specific topics
- Secured transactions, see SECURED TRANSACTIONS
- Speculative transactions and dealings, sales as, see GAMING AND LOTTERIES ¶227
- Storage of goods, see BAILMENT, WAREHOUSEMEN
- Tax sales, see INTERNAL REVENUE, TAXATION
- Tort liability for injuries from defects in goods sold, see PRODUCTS LIABILITY
- Transfer of possession of personal property without transfer of ownership, see BAILMENT
- Transportation of goods, see CARRIERS
- Uniform Commercial Code generally, see STATUTES ¶1320
- Uniform Commercial Code, other articles—
 - Article 2A, see BAILMENT
 - Article 3, see BILLS AND NOTES
 - Articles 4, 4A, and 5, see FINANCE, BANKING, AND CREDIT IV
 - Article 6, see FRAUDULENT CONVEYANCES
 - Article 7, see PROPERTY and other specific topics
 - Article 8, see CORPORATIONS AND BUSINESS ORGANIZATIONS V
 - Article 9, see SECURED TRANSACTIONS

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War, effect of on preexisting contracts of sale,
see WAR AND NATIONAL EMERGEN-
CY ¶1022

- I. IN GENERAL, ¶501-600.
- II. PARTIES TO TRANSACTION OR CONTRACT, ¶601-700.
- III. NATURE AND FORMATION OF CONTRACT, ¶701-800.
- IV. VALIDITY AND ENFORCEABILITY OF CONTRACT, ¶801-900.
- V. TERMS OF CONTRACT; RIGHTS AND OBLIGATIONS OF PARTIES, ¶901-1300.
 - (A) IN GENERAL, ¶901-930.
 - (B) GOODS SUBJECT TO CONTRACT IN GENERAL, ¶931-950.
 - (C) DELIVERY AND ACCEPTANCE OF GOODS, ¶951-1070.
 - 1. IN GENERAL, ¶951-980.
 - 2. QUALITY, VALUE, FITNESS, AND CONDITION OF GOODS, ¶981-1000.
 - 3. QUANTITY OF GOODS, ¶1001-1010.
 - 4. ACCEPTANCE OR REJECTION OF NONCONFORMING GOODS, ¶1011-1030.
 - 5. REVOCATION OF ACCEPTANCE, ¶1031-1050.
 - 6. SALE ON TRIAL OR APPROVAL; CONTRACTS FOR SALE OR RETURN, ¶1051-1070.
 - (D) AMOUNTS PAYABLE, ¶1071-1090.
 - (E) DUTIES AND EXPENSES OF TRANSPORTATION, ¶1091-1100.
 - (F) PAYMENT, ¶1101-1120.
 - (G) TRANSFER OF TITLE, ¶1121-1170.
 - (H) RISK OF LOSS, ¶1171-1190.
 - (I) ASSURANCE OF PERFORMANCE, ¶1191-1210.
 - (J) REPUDIATION, ¶1211-1220.
 - (K) EXCUSES FOR NONPERFORMANCE OR BREACH, ¶1221-1240.
 - (L) WAIVER AND ESTOPPEL, ¶1241-1300.
- VI. DURATION OF CONTRACT, ¶1301-1400.
- VII. ASSIGNMENT OF CONTRACT, ¶1401-1500.
- VIII. MODIFICATION OF CONTRACT, ¶1501-1600.
- IX. WARRANTIES, ¶1601-1900.

- IX. WARRANTIES—Cont'd
 - (A) IN GENERAL, ¶1601-1620.
 - (B) EXPRESS WARRANTIES, ¶1621-1670.
 - 1. IN GENERAL, ¶1621-1640.
 - 2. OPERATION AND EFFECT, ¶1641-1670.
 - (C) WARRANTIES IMPOSED BY LAW; IMPLIED WARRANTIES, ¶1671-1770.
 - 1. IN GENERAL, ¶1671-1680.
 - 2. PARTICULAR WARRANTIES, ¶1681-1710.
 - 3. FITNESS FOR ORDINARY PURPOSE OR USE; MERCHANTABILITY, ¶1711-1740.
 - 4. FITNESS FOR PARTICULAR PURPOSE OR USE, ¶1741-1770.
 - (D) EXCLUSION, MODIFICATION, OR LIMITATION OF WARRANTIES, ¶1771-1800.
 - 1. IN GENERAL, ¶1771-1790.
 - 2. EXPRESS WARRANTIES, ¶1791-1800.
 - (E) CUMULATION AND CONFLICT OF WARRANTIES, ¶1801-1810.
 - (F) PARTIES TO WARRANTIES, PRIVACY, AND THIRD-PARTY BENEFICIARIES, ¶1811-1850.
 - (G) NOTICE AND OPPORTUNITY TO CURE, ¶1851-1880.
 - (H) WAIVER OF BREACH, ¶1881-1900.
- X. REMEDIES, ¶1901-2400.
 - (A) IN GENERAL, ¶1901-1910.
 - (B) PARTICULAR REMEDIES OF SELLER, ¶1911-2110.
 - 1. STOPPING, WITHHOLDING, OR REFUSING DELIVERY, ¶1911-1930.
 - 2. LIEN OR SECURITY INTEREST OF SELLER, ¶1931-1950.
 - 3. RECOVERY OF GOODS BY SELLER; RECLAMATION, ¶1951-1970.
 - 4. RESALE OF GOODS BY SELLER, ¶1971-1980.
 - 5. MONETARY REMEDIES OF SELLER, ¶1981-2110.
 - (C) PARTICULAR REMEDIES OF BUYER, ¶2111-2240.
 - 1. LIEN OR SECURITY INTEREST OF BUYER, ¶2111-2120.
 - 2. RECOVERY OF GOODS BY BUYER, ¶2121-2130.
 - 3. RESALE OF GOODS BY BUYER, ¶2131-2140.

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X. REMEDIES—Cont'd

(C) PARTICULAR REMEDIES OF BUYER—Cont'd

4. MONETARY REMEDIES OF BUYER IN GENERAL, ⅈ2141–2190.

5. MONETARY REMEDIES OF BUYER FOR BREACH OF WARRANTY, ⅈ2191–2240.

(D) RESCISSION, ⅈ2241–2280.

(E) EXCLUSIVE, CONCURRENT, AND CONFLICTING REMEDIES; ELECTION, ⅈ2281–2300.

(F) CONTRACTUAL MODIFICATION OR LIMITATION OF REMEDY, ⅈ2301–2400.

XI. ACTIONS, ⅈ2401–2900.

(A) IN GENERAL, ⅈ2401–2450.

(B) ACTIONS ON WARRANTIES, ⅈ2451–2600.

1. IN GENERAL, ⅈ2451–2500.

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(C) PRESUMPTIONS, INFERENCES, AND BURDEN OF PROOF, ⅈ2601–2660.

(D) ADMISSIBILITY OF EVIDENCE, ⅈ2661–2720.

(E) WEIGHT AND SUFFICIENCY OF EVIDENCE, ⅈ2721–2780.

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XII. RIGHTS AND LIABILITIES AS TO THIRD PERSONS, ⅈ2901–3000.

(A) IN GENERAL, ⅈ2901–2910.

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(E) LOST, STOLEN, OR DAMAGED GOODS, ⅈ2961–2970.

(F) CREDITORS' RIGHTS AND LIABILITIES, ⅈ2971–2980.

(G) ACTIONS, ⅈ2981–3000.

XIII. CONDITIONAL SALES, ⅈ3001–3052.

I. IN GENERAL.

501. In general.

502. Statutory provisions.

503. — In general.

504. — Purpose and construction in general.

505. — Operation and effect.

506. — Validity.

I. IN GENERAL.(Cont'd)

507. — Retroactive or prospective operation.

508. What law governs.

509. — In general.

510. — Common law.

511. — International issues.

512. Federal preemption.

513. — In general.

514. — Warranties and redhibition.

515. Nature and definition of sale; other transactions distinguished.

Conditional sales, see ⅈ3004. *Chattel mortgages, see* CHATTEL MORTGAGES ⅈ6. *Secured transactions, see* SECURED TRANSACTIONS ⅈ10. *Gifts, see* GIFTS ⅈ5(2).

516. — In general.

517. — Bailments and leases.

(1). In general.

(2). Particular transactions.

518. — Contracts to buy or sell; future sales.

519. — Options to buy or sell.

520. — Warehouse deposits.

521. — Pledges.

522. — Agency.

523. — Consignment.

524. Subject matter of sale.

525. — In general.

526. — Goods in general.

527. — Services in general.

528. — Mixed or hybrid transactions.

529. — Existence of subject matter; future goods.

530. — Ownership or interest of seller.

531. — After-acquired property.

532. — Particular cases and subjects.

(1). In general.

(2). Personal property and chattels in general.

(3). Real property in general.

(4). Things attached to or to be severed from realty in general; fixtures in general.

(5). Buildings, structures, and construction.

(6). Plants, crops, and agriculture.

(7). Animals and livestock.

(8). Machinery and equipment.

(9). Mining, minerals, and fuel.

343. SALES**I. IN GENERAL.(Cont'd)**

- (10). Water.
- (11). Food and beverages.
- (12). Motor vehicles.
- (13). Mobile homes or structures.
- (14). Aircraft and aviation.
- (15). Vessels and shipping.
- (16). Tangible or intangible property.
- (17). Intellectual property.
- (18). Things in action.
- (19). Money.
- (20). Loans, securities, and finance.
- (21). Insurance.
- (22). Health care.
- (23). Power and electricity.
- (24). Telecommunications.
- (25). Computers and software.
- (26). Art and jewelry.
- 533. Medium or mode of sale.
- 534. Completion or perfection of sale.
- 535. — In general.
- 536. — Necessity of delivery.

II. PARTIES TO TRANSACTION OR CONTRACT.

- 601. In general.
- 602. Buyer.
- 603. Seller.
- 604. Merchant.
- 605. Financing agency.
- 606. Capacity and right to buy or sell.
- 607. Participation in and relation to transaction.
- 608. Privity in general.

III. NATURE AND FORMATION OF CONTRACT.

- 701. In general.
- 702. Elements in general.
- 703. Certainty and definiteness.
- 704. — In general.
- 705. — As to subject matter.
- 706. — As to quantity; requirements contracts.
- 707. — As to price.
- 708. — As to time of performance.
- 709. Intent of parties; assent.
- 710. — In general.
- 711. — Meeting of the minds.

III. NATURE AND FORMATION OF CONTRACT.(Cont'd)

- 712. Mutuality of obligation.
- 713. Finality and completeness.
- 714. — In general.
- 715. — Time of making contract.
- 716. — Negotiations and preliminary agreements.
- 717. — Agreements to agree.
- 718. Offer and acceptance.
- 719. — In general.
- 720. — Offer to sell.
 - (1). In general.
 - (2). Price quotations.
 - (3). Acceptance of offer to sell.
- 721. — Offer to buy.
 - (1). In general.
 - (2). Orders for goods.
 - (3). Acceptance of offer to buy.
- 722. — Duration of offer; time for acceptance.
- 723. — Withdrawal or revocation of offer.
 - (1). In general.
 - (2). Offer to sell.
 - (3). Offer to buy.
- 724. — Firm offer.
- 725. — Variance from offer; additional terms in acceptance or confirmation.
 - (1). In general.
 - (2). Offer to sell.
 - (3). Offer to buy.
 - (4). Qualified or conditional acceptance.
- 726. — Rejection of offer.
- 727. — "Shrinkwrap" agreements.
See also COPYRIGHTS AND INTELLECTUAL PROPERTY §107.
- 728. Consideration.
- 729. — In general.
- 730. — Want or failure of consideration.
- 731. Options.
- 732. — In general.
- 733. — Options to buy.
- 734. — Options to sell.
- 735. — Rights of first refusal.
- 736. Manner and requisites of expression of agreement.
- 737. — In general.
- 738. — Written contracts.
 - (1). In general.

343. SALES**III. NATURE AND FORMATION
OF CONTRACT.(Cont'd)**

- (2). Form and contents.
- (3). Execution.
- (4). Signature.
- (5). Delivery.
- 739. — Brokers' bought and sold notes.
- 740. — Correspondence.
- 741. — Invoices.
- 742. — Electronic media.
- 743. — Oral contracts.
 - (1). In general.
 - (2). Confirmation or memorialization.
- 744. — Conduct of parties; implied agreements.
- 745. Place of making contract.
- 746. Conditions precedent to formation.

**IV. VALIDITY AND ENFORCEABILITY
OF CONTRACT.**

- 801. In general.
- 802. Mistake.
- 803. — In general.
- 804. — Signing in ignorance of contents.
- 805. Misrepresentation and fraud.
- 806. — In general.
- 807. — By seller.
 - (1). In general.
 - (2). Intent and knowledge of seller.
 - (3). Matters of fact or of opinion or commendation.
 - (4). Representations not contained in written contract or warranty.
 - (5). Concealment.
 - (6). Communication of representations.
 - (7). Reliance on representations.
 - (8). Fraudulent procurement of signature.
 - (9). Title or interest.
 - (10). Quality or value.
 - (11). Doctrine of caveat emptor.
- 808. — By buyer.
 - (1). In general.
 - (2). Intent and knowledge.
 - (3). Matters of fact or of opinion.
 - (4). Reliance on representations.
 - (5). Representations as to value.
 - (6). Intent not to pay.

**IV. VALIDITY AND ENFORCEABILITY
OF CONTRACT.(Cont'd)**

- (7). Insolvency or inability to pay, and concealment thereof.
- (8). Representations as to financial condition in general.
- (9). Statements to and reports by third parties.
- 809. — Effect.
- 810. Duress.
- 811. Undue influence.
- 812. Illegality.
- 813. — In general.
- 814. — Violation of public policy.
- 815. Unreasonable or oppressive contracts.
- 816. — In general.
- 817. — Adhesion contracts in general.
- 818. — Unconscionability in general.
- 819. — Particular contracts and provisions.
- 820. Partial invalidity.
- 821. Estoppel or waiver as to defects or objections.
- 822. Ratification of contract.

**V. TERMS OF CONTRACT; RIGHTS AND
OBLIGATIONS OF PARTIES.****(A) IN GENERAL.**

- 901. In general.
- 902. General rules of construction.
- 903. — In general.
- 904. — Construction against drafter.
- 905. — Construing documents together.
 - (1). In general.
 - (2). Incorporation by reference.
- 906. — Extrinsic circumstances; construction by parties.
 - (1). In general.
 - (2). Course of dealing; course of performance.
- 907. Performance and breach in general.
- 908. — In general.
- 909. — By seller.
- 910. — By buyer.
- 911. Particular terms and obligations in general.
- 912. Implied terms and obligations in general.
- 913. Good faith and fair dealing in general.
- 914. Conditions and provisos in general.
- 915. Notice requirements in general.

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V. TERMS OF CONTRACT; RIGHTS AND OBLIGATIONS OF PARTIES.(Cont'd)

- 916. Operation and effect of transaction or contract in general.
- 917. Executed and executory contracts.
- 918. Entire or severable contracts.
- 919. Options; rights of first refusal.

(B) GOODS SUBJECT TO CONTRACT IN GENERAL.

- 931. In general.
- 932. Description in general.
- 933. Specific articles or goods.
- 934. Identification, selection, and appropriation.
- 935. Title or possession of seller.
Transfer of title, see V(G). Warranties, see IX.
- 936. Property interest of buyer.

(C) DELIVERY AND ACCEPTANCE OF GOODS.**1. IN GENERAL.**

- 951. In general.
- 952. Delivery in general.
- 953. — In general.
- 954. — Ability and readiness of seller to deliver.
- 955. — Demand or notice by buyer.
- 956. — Tender or offer by seller.
- 957. Manner or mode of delivery; acts constituting delivery.
- 958. — In general.
- 959. — Property left in possession of seller.
- 960. — Property in possession of buyer.
- 961. — Property left in possession of third person.
- 962. — Access of and removal by buyer.
- 963. — Delivery to or through carrier or other intermediary.
- 964. — Symbolical or constructive delivery.
- 965. Place of delivery.
- 966. Time of delivery.
- 967. — In general.
- 968. — Time as being “of the essence”.
- 969. — Immediate delivery or as soon as possible.
- 970. — Reasonable time.
- 971. Acceptance in general.
- 972. Manner or mode of acceptance; acts constituting acceptance.
- 973. — In general.

V. TERMS OF CONTRACT; RIGHTS AND OBLIGATIONS OF PARTIES.(Cont'd)

- 974. — Timeliness; effect of buyer's delay.
- 975. — Failure or refusal to return goods.
- 976. — Use or other disposition of goods by buyer.
- 977. Partial delivery and acceptance; installments.

2. QUALITY, VALUE, FITNESS, AND CONDITION OF GOODS.*Warranties, see IX.*

- 981. In general.
- 982. Particular cases and goods in general.
- 983. Conformity to contract; perfect tender.
- 984. Fitness for purpose intended.
- 985. Obvious, latent, or hidden defects.
- 986. Injuries from defects.
- 987. Loss of or injury to goods.
- 988. Inspection and testing.
- 989. — In general.
- 990. — Time and place.
- 991. — Mode, extent, and reasonableness.
- 992. Sale by sample.
- 993. Doctrine of caveat emptor.

3. QUANTITY OF GOODS.*Warranties, see IX.*

- 1001. In general.
- 1002. Definite, indefinite, or unknown quantity in general.
- 1003. Particular cases and goods in general.
- 1004. Weight, volume, or other measure of quantity.
- 1005. Output contracts, requirements contracts, and exclusive dealings.
- 1006. — In general.
- 1007. — Buyer's obligations, performance, and breach.
- 1008. — Seller's obligations, performance, and breach.

4. ACCEPTANCE OR REJECTION OF NONCONFORMING GOODS.

- 1011. In general.
- 1012. Particular cases and goods in general.
- 1013. Partial delivery and acceptance; installments.
- 1014. Notice and opportunity to cure.
- 1015. Time for acceptance, rejection, or notice.

343. SALES**V. TERMS OF CONTRACT; RIGHTS AND OBLIGATIONS OF PARTIES.(Cont'd)**

- 1016. Adequacy of efforts to cure.
- 1017. — In general.
- 1018. — Timeliness.
- 1019. Rights and duties as to rightfully rejected goods.
- 1020. — In general.
- 1021. — Merchant buyer.
- 1022. Acceptance after rejection or cure; re-acceptance.

5. REVOCATION OF ACCEPTANCE.

Repudiation, see V(I). Cancellation and termination, see VI. Rescission, see X(D).

- 1031. In general.
- 1032. Grounds; substantial impairment.
- 1033. Persons against whom revocation may be had.
- 1034. — In general.
- 1035. — Privity in general.
- 1036. — Manufacturers.
- 1037. Partial revocation.
- 1038. Notice and opportunity to cure.
- 1039. Timeliness.
- 1040. Substantial change in condition of goods.
- 1041. Rights and duties after rightful revocation.
- 1042. Acceptance after revocation; reacceptance.

6. SALE ON TRIAL OR APPROVAL; CONTRACTS FOR SALE OR RETURN.

- 1051. In general.
- 1052. Right to return or reject goods.
- 1053. Mode, extent, and reasonableness of trial or test.
- 1054. Acceptance or approval of goods.
- 1055. Exercise of right to return or reject goods.
- 1056. — In general.
- 1057. — Time and place of return or rejection.
- 1058. — Notice to seller.
- 1059. — Rights and liabilities of parties.
- 1060. Loss or waiver of right to return or reject.
- 1061. Loss or impairment of property before acceptance.
- 1062. Effect of failure to return goods.

(D) AMOUNTS PAYABLE.

- 1071. In general.
- 1072. Price.
- 1073. — In general.
- 1074. — Amount agreed on; contract price.
 - (1). In general.
 - (2). Ascertainment.
- 1075. — Market price.
- 1076. — Reasonable price.
- 1077. — Open price.
- 1078. Expenses in general.
- 1079. Credits and deductions; abatement.
- 1080. Interest and service charges.
- 1081. Taxes.

(E) DUTIES AND EXPENSES OF TRANSPORTATION.

- 1091. In general.
- 1092. Free on board (F.O.B.) contracts.
- 1093. Cost, insurance, and freight (C.I.F.) contracts.

(F) PAYMENT.

- 1101. In general.
- 1102. Demand for payment.
- 1103. Tender of payment.
- 1104. Place of payment.
- 1105. Time of payment and terms of credit.
- 1106. — In general.
- 1107. — Contract silent as to time.
- 1108. — Delivery of goods.
- 1109. — Delivery in installments.
- 1110. — Inspection and approval.
- 1111. Mode and sufficiency of payment.
- 1112. — In general.
- 1113. — Cash.
- 1114. — Notes or other obligations, and payment thereof.
- 1115. Payment in full.
- 1116. Installments and deferred payments.

Retail installment sales statutes, see FINANCE, BANKING, AND CREDIT III.

(G) TRANSFER OF TITLE.

Title or possession of seller, see §935.

- 1121. In general.
- 1122. Specific articles or goods in general.
- 1123. Acts to be done before passage of title in general.
- 1124. Ascertainment of quantity or price.

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V. TERMS OF CONTRACT; RIGHTS AND OBLIGATIONS OF PARTIES.(Cont'd)

- 1125. Identification of goods.
- 1126. — In general.
- 1127. — Part of specific stock or mass.
- 1128. — Part of contents of public warehouse or elevator.
- 1129. — Selection and appropriation by assent of parties.
- 1130. — Appropriation by seller.
- 1131. — Appropriation by buyer.
- 1132. Delivery and acceptance.
- 1133. — In general; necessity and effect.
- 1134. — Provisions of contract.
- 1135. — Character, location, and possession of property.
- 1136. — Delivery to or through carrier or other intermediary.
- 1137. — Symbolical or constructive delivery.
- 1138. — Delivery in installments.
- 1139. — Inspection, trial, or test.
- 1140. — Consent to delivery; acceptance or rejection of goods.
- 1141. — Acts to be done after delivery.
- 1142. Payment of price.
- 1143. — In general; necessity and effect.
- 1144. — Payment by note, check, or acceptance.
- 1145. — Effect of delivery of goods in general.
- 1146. — Delivery to or through carrier in general.
- 1147. — Bill of lading, shipping receipt, and order for collection of price.
- 1148. — Effect of partial payment.
- 1149. Sale on credit.
- 1150. Sale on trial or approval.
- 1151. Contract for sale or return.
- 1152. Articles or goods to be produced or manufactured.
- 1153. Bill of sale or other instrument of conveyance.
- 1154. — In general.
- 1155. — Necessity and duty to make.
- 1156. — Nature and essentials in general.
- 1157. — Form and contents.
 - (1). In general.
 - (2). Description of property.
- 1158. — Execution.

V. TERMS OF CONTRACT; RIGHTS AND OBLIGATIONS OF PARTIES.(Cont'd)

- 1159. — Delivery.
- 1160. — Validity.
- 1161. — Filing, recording, and registration.
- 1162. — Construction and operation.
- 1163. Place of transfer of title.
- 1164. Rights and liabilities of parties as to each other before transfer.
- 1165. Reconveyance by buyer to seller.

(H) RISK OF LOSS.

- 1171. In general.
- 1172. Relation to title in general.
- 1173. Delivery and acceptance.
- 1174. — In general.
- 1175. — Delivery to or through carrier or other intermediary.
- 1176. Payment of price.
- 1177. Sale on credit.
- 1178. Sale on trial or approval.
- 1179. Contract for sale or return.
- 1180. Articles or goods to be produced or manufactured.
- 1181. Agreement of parties as to risk of loss.

(I) ASSURANCE OF PERFORMANCE.

- 1191. In general.
- 1192. Grounds for request or demand.
- 1193. — In general.
- 1194. — By buyer to seller.
- 1195. — By seller to buyer.
- 1196. Adequacy of request or demand.
- 1197. Adequacy of assurance offered or provided.
- 1198. — In general.
- 1199. — From seller to buyer.
- 1200. — From buyer to seller.

(J) REPUDIATION.

Revocation of acceptance, see V(C)5. Cancellation and termination, see VI. Rescission, see X(D).

- 1211. In general.
- 1212. By seller.
- 1213. By buyer.
- 1214. Anticipatory repudiation.
- 1215. — In general.
- 1216. — By seller.
- 1217. — By buyer.
- 1218. Retraction of repudiation.

343. SALES**(K) EXCUSES FOR NONPERFORMANCE OR BREACH.**

- 1221. In general.
- 1222. Frustration.
- 1223. Impossibility.
- 1224. Impracticability.
- 1225. Force majeure.
- 1226. Financial insecurity; insolvency.
- 1227. Acts of buyer as excuse.
- 1228. — In general.
- 1229. — Buyer's nonperformance or breach in general.
- 1230. — Buyer's refusal to receive or take delivery of goods.
- 1231. Acts of third person.
- 1232. Excuses for buyer's nonperformance or breach.
- 1233. — In general.
- 1234. — Financial insecurity; insolvency.
- 1235. Notice of inability to perform.

(L) WAIVER AND ESTOPPEL.

- 1241. In general.
- 1242. Waiver of seller's rights.
- 1243. — In general.
- 1244. — As to quantity of goods purchased.
- 1245. — As to passage of title.
- 1246. Waiver of buyer's rights.
- 1247. — In general.
- 1248. — As to time, place, and manner of delivery.
- 1249. — As to quality, value, fitness, and condition of goods.
 - (1). In general.
 - (2). Inspection or opportunity to inspect.
 - (3). Failure or refusal to return goods.
 - (4). Use or other disposition of goods.
 - (5). Payment.
- 1250. — As to quantity of goods supplied.
- 1251. Retraction of waiver.
- 1252. Estoppel.
- 1253. — In general.
- 1254. — Estoppel of seller.
- 1255. — Estoppel of buyer.

VI. DURATION OF CONTRACT.

- 1301. In general.
- 1302. Cancellation or termination.
Revocation of acceptance, see V(C)5. Repudiation, see V(J). Rescission, see X(D).

VI. DURATION OF CONTRACT.(Cont'd)

- 1303. — In general.
- 1304. — By seller.
- 1305. — By buyer.
- 1306. — Notice and timeliness.
- 1307. — Options to cancel or terminate.
- 1308. Renewal of contract.
- 1309. Abandonment of contract.

VII. ASSIGNMENT OF CONTRACT.

- 1401. In general.
- 1402. Consent.
- 1403. Delegation.

VIII. MODIFICATION OF CONTRACT.

- 1501. In general.
- 1502. Intent of parties; assent.
- 1503. Offer and acceptance.
- 1504. Consideration.
- 1505. Manner and requisites of expression.
- 1506. — In general.
- 1507. — Modification by conduct, course of performance, or course of dealing.
- 1508. — Oral or written.
- 1509. Validity and enforceability.
- 1510. Operation and effect.
- 1511. Retraction.

IX. WARRANTIES.

Tort liability for injuries from defects in goods sold, see PRODUCTS LIABILITY.

(A) IN GENERAL.

- 1601. In general.
- 1602. Warranty distinguished from other grounds of liability.
- 1603. — In general.
- 1604. — Other contractual terms or obligations.
- 1605. — Negligence, products liability, and torts in general.
- 1606. — Misrepresentation or fraud.
- 1607. Consideration.
- 1608. — In general.
- 1609. — Warranty subsequent to contract of sale.
- 1610. Construction, operation, and effect in general.
- 1611. — In general.

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IX. WARRANTIES.(Cont'd)

- 1612. — Breach and elements thereof in general.
- 1613. — Particular cases and goods.

(B) EXPRESS WARRANTIES.

1. IN GENERAL.

- 1621. In general.
- 1622. Making and requisites.
- 1623. — In general.
- 1624. — Statements or representations constituting warranty.
 - (1). In general.
 - (2). Affirmations and promises in general.
 - (3). Intention of parties.
 - (4). Specific words or language.
 - (5). Descriptions.
 - (6). Matters of opinion or commendation.
 - (7). Statements as to kind, quality, condition, or value.
 - (8). Comparisons.
- 1625. — Samples or models.
- 1626. — Reliance.
- 1627. — Basis of bargain.
- 1628. — Advertising and promotion.
- 1629. — Warranty subsequent to contract of sale.
- 1630. Validity and enforceability.

2. OPERATION AND EFFECT.

- 1641. In general.
- 1642. Construction in general.
- 1643. Breach and elements thereof in general.
- 1644. Particular cases and goods.
- 1645. — In general.
- 1646. — Buildings, structures, and construction.
- 1647. — Plants, crops, and agriculture.
- 1648. — Animals and livestock.
- 1649. — Machinery and equipment.
- 1650. — Food and beverages.
- 1651. — Motor vehicles.
- 1652. — Mobile homes or structures.
- 1653. — Drugs and medical devices.
- 1654. — Computers and software.

See also COPYRIGHTS AND INTELLECTUAL PROPERTY ¶107.

IX. WARRANTIES.(Cont'd)

- 1655. Design defects.
- 1656. Duration of warranty.
- 1657. — In general.
- 1658. — Future defects and events; future performance.
- 1659. Used or second-hand goods.
- 1660. Causation.

(C) WARRANTIES IMPOSED BY LAW; IMPLIED WARRANTIES.

1. IN GENERAL.

- 1671. In general.
- 1672. Breach and elements thereof in general.
- 1673. Particular cases and goods in general.

2. PARTICULAR WARRANTIES.

- 1681. In general.
- 1682. Identity or genuineness.
- 1683. Quantity.
- 1684. Quality, fitness, or condition.
Fitness for ordinary purpose or use, see IX(C)3. Merchantability, see IX(C)3. Fitness for particular purpose or use, see IX(C)4.
- 1685. — In general.
- 1686. — Knowledge of defects.
- 1687. — Obvious, latent, or hidden defects.
- 1688. — Doctrine of caveat emptor.
- 1689. — Examination or inspection.
- 1690. — Sale by sample.
- 1691. — Fitness for intended purpose or use.
Fitness for ordinary purpose or use, see IX(C)3. Merchantability, see IX(C)3. Fitness for particular purpose or use, see IX(C)4.
- 1692. Redhibitory defects or vices.
- 1693. — In general.
- 1694. — Breach and elements thereof in general.
- 1695. — Particular cases and goods.
- 1696. Title.
- 1697. — In general.
- 1698. — Breach and elements thereof in general.
- 1699. — Particular cases and goods.

3. FITNESS FOR ORDINARY PURPOSE OR USE; MERCHANTABILITY.

- 1711. In general.

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IX. WARRANTIES.(Cont'd)

- 1712. Reliance.
 - 1713. Buyer's knowledge.
 - 1714. Seller's knowledge.
 - 1715. Seller as merchant.
 - 1716. Breach and elements thereof in general.
 - 1717. Particular cases and goods.
 - 1718. — In general.
 - 1719. — Buildings, structures, and construction.
 - 1720. — Plants, crops, and agriculture.
 - 1721. — Animals and livestock.
 - 1722. — Machinery and equipment.
 - 1723. — Food and beverages.
 - 1724. — Motor vehicles.
 - 1725. — Mobile homes or structures.
 - 1726. — Drugs and medical devices.
 - 1727. — Computers and software.
- See also COPYRIGHTS AND INTELLECTUAL PROPERTY* ¶107.
- 1728. Design defects.
 - 1729. Duration of warranty.
 - 1730. — In general.
 - 1731. — Future defects and events; future performance.
 - 1732. Used or second-hand goods.
 - 1733. Causation.

4. FITNESS FOR PARTICULAR PURPOSE OR USE.

- 1741. In general.
- 1742. Reliance.
- 1743. Buyer's knowledge.
- 1744. Seller's knowledge.
- 1745. Breach and elements thereof in general.
- 1746. Particular cases and goods.
- 1747. — In general.
- 1748. — Buildings, structures, and construction.
- 1749. — Plants, crops, and agriculture.
- 1750. — Animals and livestock.
- 1751. — Machinery and equipment.
- 1752. — Food and beverages.
- 1753. — Motor vehicles.
- 1754. — Mobile homes or structures.
- 1755. — Drugs and medical devices.
- 1756. — Computers and software.

See also COPYRIGHTS AND INTELLECTUAL PROPERTY ¶107.

IX. WARRANTIES.(Cont'd)

- 1757. Design defects.
- 1758. Duration of warranty.
- 1759. — In general.
- 1760. — Future defects and events; future performance.
- 1761. Used or second-hand goods.
- 1762. Causation.

(D) EXCLUSION, MODIFICATION, OR LIMITATION OF WARRANTIES.

1. IN GENERAL.

- 1771. In general.
- 1772. Particular cases, goods, and warranties in general.
- 1773. Implied warranties in general.
- 1774. Warranties of quality, fitness, or condition.
- 1775. — In general.
- 1776. — Obvious, latent, or hidden defects.
- 1777. — Redhibitory defects or vices.
- 1778. Warranties of fitness for ordinary purpose or use; merchantability.
- 1779. — In general.
- 1780. — Particular cases and goods.
- 1781. Warranties of fitness for particular purpose or use.
- 1782. — In general.
- 1783. — Particular cases and goods.
- 1784. Warranties of title and against infringement thereof.
- 1785. — In general.
- 1786. — Particular cases and goods.
- 1787. "As is" provisions.
- 1788. Course of dealing or course of performance.

2. EXPRESS WARRANTIES.

- 1791. In general.
- 1792. Particular cases and goods.

(E) CUMULATION AND CONFLICT OF WARRANTIES.

- 1801. In general.
- 1802. Intention of parties.
- 1803. Consistency of samples, specifications, and descriptions.
- 1804. Consistency of express and implied warranties.

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(F) PARTIES TO WARRANTIES, PRIVACY, AND THIRD-PARTY BENEFICIARIES.

- 1811. In general.
- 1812. Express warranties in general.
- 1813. Implied warranties in general.
- 1814. Seller and parties related thereto; vertical privity.
- 1815. — In general.
- 1816. — Manufacturers and others in distribution chain.
 - (1). In general.
 - (2). Motor vehicles.
- 1817. — Agents and other representatives.
- 1818. — Joint and several liability.
- 1819. Buyer and parties related thereto; horizontal privity.
- 1820. — In general.
- 1821. — Users and consumers.
- 1822. — Family, household, and guests.
- 1823. — Employees.
- 1824. — Remote or subsequent purchasers.
- 1825. Other parties.
- 1826. — In general.
- 1827. — Bystanders.
- 1828. — General public.
- 1829. Nature of injury, damage, or loss.
- 1830. — In general.
- 1831. — Personal injuries.
- 1832. — Property damage.
- 1833. — Economic loss.
- 1834. Nature of good or product.
- 1835. — In general.
- 1836. — Dangerous instrumentalities in general.
- 1837. — Food and beverages.
- 1838. — Chemicals and pesticides.
- 1839. — Drugs and medical devices.
 - (1). In general.
 - (2). Learned-intermediary doctrine.
- 1840. Representations.
- 1841. — In general.
- 1842. — Advertising, marketing, and labeling.
- 1843. Assignment or other transfer of warranty.

(G) NOTICE AND OPPORTUNITY TO CURE.

- 1851. In general.
- 1852. Necessity and effect.

IX. WARRANTIES.(Cont'd)

- 1853. — In general.
- 1854. — Notice as condition precedent.
- 1855. — Parties entitled to notice.
- 1856. — Waiver of notice.
- 1857. Time for giving notice.
- 1858. — In general.
- 1859. — Reasonable time.
- 1860. — Prejudice from delay.
- 1861. Mode and sufficiency of notice.
- 1862. — In general.
- 1863. — Actual or constructive notice.
- 1864. — Contractual provisions as to notice.
- 1865. — Commencement of litigation as notice.
- 1866. Adequacy of efforts to cure.
- 1867. Return of goods.
- 1868. — In general.
- 1869. — Waiver or refusal by seller.

(H) WAIVER OF BREACH.

- 1881. In general.
- 1882. Acceptance, use, or failure to return or object.
- 1883. Retention induced by promise or assurance by seller.
- 1884. Failure or delay as to notice of defects.
- 1885. Time and opportunity to discover defects.
- 1886. Payment of price or giving of note.
- 1887. Estoppel.

X. REMEDIES.

Actions to obtain remedies, see XI.

(A) IN GENERAL.

- 1901. In general.
- 1902. Seller's remedies in general.
- 1903. Buyer's remedies in general.
- 1904. — In general.
- 1905. — Breach of warranty.
- 1906. — Redhibitory defects or vices.

(B) PARTICULAR REMEDIES OF SELLER.

1. STOPPING, WITHHOLDING, OR REFUSING DELIVERY.

- 1911. In general.

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X. REMEDIES.(Cont'd)

- 1912. Sale on credit and nonpayment of price.
- 1913. Insolvency of buyer.
- 1914. Persons entitled to exercise right.
- 1915. Persons against whom right may be exercised.
- 1916. — In general.
- 1917. — Subsequent purchasers.
- 1918. Duration and termination of transit.
- 1919. Waiver or loss of right.
- 1920. Manner of exercise of right.
- 1921. Operation and effect.

2. LIEN OR SECURITY INTEREST OF SELLER.

Equitable liens, see LIENS ¶7.

- 1931. In general.
- 1932. Statutory provisions.
- 1933. What law governs.
- 1934. Lien reserved in contract of sale.
- 1935. Filing, recording, and registration.
- 1936. Lien arising from possession of seller.
- 1937. Amount and extent of lien.
- 1938. Property or interest subject to lien.
- 1939. Priorities.
- 1940. Assignment of lien.
- 1941. Transfer of property by buyer.
- 1942. — In general.
- 1943. — Rights and liabilities of subsequent purchasers.
- 1944. Waiver, loss, or discharge.
- 1945. Payment or satisfaction.
- 1946. Enforcement.
- 1947. Security interest.

Security interests under Article 9 of the Uniform Commercial Code, see SECURED TRANSACTIONS.

3. RECOVERY OF GOODS BY SELLER; RECLAMATION.

- 1951. In general.
- 1952. Nature and form of remedy.
- 1953. Right to remedy; grounds and defenses.
- 1954. — In general.
- 1955. — Misrepresentation or fraud in general.
- 1956. — Insolvency of buyer.
- 1957. — Cash or credit sale.
- 1958. — Waiver or loss of right.
- 1959. Right to follow proceeds.
- 1960. Demand or notice.

4. RESALE OF GOODS BY SELLER.

- 1971. In general.
- 1972. Identification of goods.
- 1973. Unfinished goods.
- 1974. Notice.
- 1975. Place and time of sale.
- 1976. Manner and conduct of sale.
- 1977. Right to proceeds.
- 1978. Obligation to resell.

5. MONETARY REMEDIES OF SELLER.

- 1981. In general.
- 1982. Damages in general.
- 1983. Particular cases and goods in general.
- 1984. Price or value.
- 1985. — In general.
- 1986. — Grounds of recovery; elements.
- 1987. — Particular cases and goods.

- (1). In general.
- (2). Buildings, structures, and construction.
- (3). Plants, crops, and agriculture.
- (4). Animals and livestock.
- (5). Machinery and equipment.
- (6). Food and beverages.
- (7). Motor vehicles.
- (8). Mobile homes or structures.
- (9). Drugs and medical devices.
- (10). Computers and software.

See also COPYRIGHTS AND INTELLECTUAL PROPERTY ¶107.

- 1988. Resale price.
- 1989. — In general.
- 1990. — Difference from contract price.
- 1991. — Particular cases and goods.

- (1). In general.
- (2). Buildings, structures, and construction.
- (3). Plants, crops, and agriculture.
- (4). Animals and livestock.
- (5). Machinery and equipment.
- (6). Food and beverages.
- (7). Motor vehicles.
- (8). Mobile homes or structures.
- (9). Drugs and medical devices.
- (10). Computers and software.

See also COPYRIGHTS AND INTELLECTUAL PROPERTY ¶107.

- 1992. Market price or value.
- 1993. — In general.

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X. REMEDIES.(Cont'd)

- 1994. — Difference from contract price.
- 1995. — Particular cases and goods.
 - (1). In general.
 - (2). Buildings, structures, and construction.
 - (3). Plants, crops, and agriculture.
 - (4). Animals and livestock.
 - (5). Machinery and equipment.
 - (6). Food and beverages.
 - (7). Motor vehicles.
 - (8). Mobile homes or structures.
 - (9). Drugs and medical devices.
 - (10). Computers and software.
- See also COPYRIGHTS AND INTELLECTUAL PROPERTY* ¶107.
- 1996. Lost profits.
- 1997. — In general.
- 1998. — Lost volume sellers.
- 1999. — Jobbers and component sellers.
- 2000. Unique or specialty goods.
- 2001. — In general.
- 2002. — Lost profits.
- 2003. Additional or incidental damages.
- 2004. — In general.
- 2005. — Expenses connected with delivery, transportation, care, and custody of goods.
- 2006. Special, indirect, or consequential damages.
- 2007. Mitigation or reduction of loss.
- 2008. — In general.
- 2009. — Expenses saved and costs avoided.
- 2010. Punitive or exemplary damages.

(C) PARTICULAR REMEDIES OF BUYER.

1. LIEN OR SECURITY INTEREST OF BUYER.

Equitable liens, see LIENS ¶7.

- 2111. In general.
- 2112. Particular cases and goods.

2. RECOVERY OF GOODS BY BUYER.

- 2121. In general.
- 2122. Nature and form of remedy.
- 2123. Right to remedy; grounds and defenses.
- 2124. — In general.
- 2125. — Insolvency of seller.
- 2126. — Ability of buyer to effect cover.

X. REMEDIES.(Cont'd)

- 2127. — Payment or tender of price.
- 2128. Right to follow proceeds.
- 2129. Demand or notice.

3. RESALE OF GOODS BY BUYER.

- 2131. In general.
- 2132. Particular cases and goods.
- 2133. Right to proceeds.

4. MONETARY REMEDIES OF BUYER IN GENERAL.

- 2141. In general.
- 2142. Damages in general.
- 2143. — In general.
- 2144. — Nondelivery or repudiation by seller.
- 2145. — Nonconforming goods.
- 2146. Particular cases and goods in general.
- 2147. — In general.
- 2148. — Buildings, structures, and construction.
- 2149. — Plants, crops, and agriculture.
- 2150. — Animals and livestock.
- 2151. — Machinery and equipment.
- 2152. — Food and beverages.
- 2153. — Motor vehicles.
- 2154. — Mobile homes or structures.
- 2155. — Drugs and medical devices.
- 2156. — Computers and software.
- See also COPYRIGHTS AND INTELLECTUAL PROPERTY* ¶107.
- 2157. Recovery of amounts paid.
- 2158. — In general.
- 2159. — Deposits, earnest money, and down payments.
- 2160. — Overpayments.
- 2161. Procurement and price of substitute goods; "cover".

- 2162. — In general.
- 2163. — Difference from contract price.
- 2164. — Expenses or commissions.
- 2165. — Particular cases and goods.
 - (1). In general.
 - (2). Buildings, structures, and construction.
 - (3). Plants, crops, and agriculture.
 - (4). Animals and livestock.
 - (5). Machinery and equipment.
 - (6). Food and beverages.
 - (7). Motor vehicles.

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X. REMEDIES.(Cont'd)

- (8). Mobile homes or structures.
- (9). Drugs and medical devices.
- (10). Computers and software.

See also COPYRIGHTS AND INTELLECTUAL PROPERTY §107.

- 2166. Market price or value.
- 2167. — In general.
- 2168. — Difference from contract price.
- 2169. — Particular cases and goods.

- (1). In general.
- (2). Buildings, structures, and construction.
- (3). Plants, crops, and agriculture.
- (4). Animals and livestock.
- (5). Machinery and equipment.
- (6). Food and beverages.
- (7). Motor vehicles.
- (8). Mobile homes or structures.
- (9). Drugs and medical devices.
- (10). Computers and software.

See also COPYRIGHTS AND INTELLECTUAL PROPERTY §107.

- 2170. Additional or incidental damages; expenses.
- 2171. — In general.
- 2172. — Inspection, receipt, transportation, care, and custody of goods.
- 2173. Special, indirect, or consequential damages; lost profits.
- 2174. — In general.
- 2175. — Due to nondelivery or repudiation by seller.
- 2176. — Due to delay in delivery.
- 2177. — Due to nonconforming goods.
- 2178. — Goods intended for particular purpose.
- 2179. — Goods intended for resale.
- 2180. Mitigation or reduction of loss.
- 2181. — In general.
- 2182. — Expenses saved and costs avoided.
- 2183. Punitive or exemplary damages.

5. MONETARY REMEDIES OF BUYER FOR BREACH OF WARRANTY.

- 2191. In general.
- 2192. Damages in general.
- 2193. Particular cases and goods in general.
- 2194. — In general.

X. REMEDIES.(Cont'd)

- 2195. — Buildings, structures, and construction.
 - 2196. — Plants, crops, and agriculture.
 - 2197. — Animals and livestock.
 - 2198. — Machinery and equipment.
 - 2199. — Food and beverages.
 - 2200. — Motor vehicles.
 - 2201. — Mobile homes or structures.
 - 2202. — Drugs and medical devices.
 - 2203. — Computers and software.
- See also COPYRIGHTS AND INTELLECTUAL PROPERTY* §107.
- 2204. Recovery of amounts paid.
 - 2205. Reduction of price; quanti minoris.
 - 2206. Procurement and price of substitute goods; "cover".
 - 2207. Value of goods.
 - 2208. — In general.
 - 2209. — Market value or price in general.
 - 2210. — Difference from value as warranted.
 - 2211. — Difference from contract price.
 - 2212. — Particular cases and goods.
- (1). In general.
 - (2). Buildings, structures, and construction.
 - (3). Plants, crops, and agriculture.
 - (4). Animals and livestock.
 - (5). Machinery and equipment.
 - (6). Food and beverages.
 - (7). Motor vehicles.
 - (8). Mobile homes or structures.
 - (9). Drugs and medical devices.
 - (10). Computers and software.

See also COPYRIGHTS AND INTELLECTUAL PROPERTY §107.

- 2213. Additional or incidental damages; expenses.
 - 2214. — In general.
 - 2215. — Expenses connected with repair, recall, or return.
 - 2216. Special, indirect, or consequential damages; lost profits.
 - 2217. — In general.
 - 2218. — Particular cases and goods.
- (1). In general.
 - (2). Buildings, structures, and construction.
 - (3). Plants, crops, and agriculture.

343. SALES

X. REMEDIES.(Cont'd)

- (4). Animals and livestock.
- (5). Machinery and equipment.
- (6). Food and beverages.
- (7). Motor vehicles.
- (8). Mobile homes or structures.
- (9). Drugs and medical devices.
- (10). Computers and software.

See also COPYRIGHTS AND INTELLECTUAL PROPERTY §107.

- 2219. Lost, destroyed, or worthless goods.
- 2220. Injuries to other property.
- 2221. Personal injuries.
- 2222. Mitigation or reduction of loss.
- 2223. — In general.
- 2224. — Expenses saved and costs avoided.
- 2225. — Use or resale of defective goods.
- 2226. Punitive or exemplary damages.
- 2227. Monetary remedies for breach of warranty of title.
- 2228. — In general.
- 2229. — Particular cases and goods.
- 2230. Interest.

(D) RESCISSION.

Revocation of acceptance, see V(C)5. Repudiation, see V(J). Cancellation and termination, see VI.

- 2241. In general.
- 2242. Status of doctrine under Uniform Commercial Code.
- 2243. Right to rescind; grounds.
- 2244. — In general.
- 2245. — Invalidity of contract.
- 2246. — Breach of contract or condition in general.
- 2247. — Nonpayment of price.
- 2248. — Insolvency.
- 2249. — Failure of consideration.
- 2250. — Failure to deliver.
- 2251. — Defect in title.
- 2252. — Defect in quantity or quality of goods.
- 2253. — Breach of warranty.
- 2254. — Redhibitory defects or vices.
- 2255. Persons against whom rescission may be had.
- 2256. — In general.
- 2257. — Privy in general.
- 2258. — Manufacturers.

X. REMEDIES.(Cont'd)

- 2259. Waiver or estoppel.
- 2260. Conditions precedent.
- 2261. — In general.
- 2262. — Restoration of consideration.
- 2263. — Restoration of goods.
- 2264. Defenses or objections.
- 2265. Time for rescission, and laches.
- 2266. — In general.
- 2267. — Rescission by seller.
- 2268. — Rescission by buyer.
 - (1). In general.
 - (2). Inspection, trial, or test.
 - (3). Delay induced by seller.
- 2269. Acts constituting rescission.
- 2270. Partial rescission.
- 2271. Agreements to rescind; mutual rescission.
- 2272. Operation and effect.
- 2273. Effect of refusal of seller to receive goods.
- 2274. — In general.
- 2275. — Resale by buyer.

(E) EXCLUSIVE, CONCURRENT, AND CONFLICTING REMEDIES; ELECTION.

- 2281. In general.
- 2282. Seller's remedies.
- 2283. — In general.
- 2284. — Recovery of goods; reclamation.
- 2285. Buyer's remedies.
- 2286. — In general.
- 2287. — Effect of revocation of acceptance.
- 2288. — Procurement of substitute goods; "cover".
- 2289. — Warranties.
- 2290. — Economic loss doctrine.
- 2291. Relation of rescission to other remedies.
- 2292. — In general.
- 2293. — Rescission by seller.
- 2294. — Rescission by buyer.
- 2295. — Rescission for breach of warranty; redhibition.
- 2296. Effect of cancellation or rescission on claims for antecedent breach.

343. SALES

(F) CONTRACTUAL MODIFICATION OR LIMITATION OF REMEDY.

- 2301. In general.
- 2302. Validity and enforceability in general.
- 2303. Incidental, consequential, indirect, or special damages.
- 2304. Warranties.
- 2305. — In general.
- 2306. — Validity and enforceability in general.
- 2307. — Incidental, consequential, indirect, or special damages.
- 2308. — Repair or replacement.
- 2309. Liquidated damages.
- 2310. — In general.
- 2311. — Deposits, forfeitures, and restitution.

XI. ACTIONS.

(A) IN GENERAL.

- 2401. In general.
- 2402. Existence, nature, and form of action.
- 2403. — In general.
- 2404. — Action by seller.
- 2405. — Action by buyer.
- 2406. — Good faith and fair dealing.
- 2407. — Rescission.
- 2408. Conditions precedent.
- 2409. — In general.
- 2410. — Action by seller.
- 2411. — Action by buyer.
- 2412. Defenses.
- 2413. — In general.
- 2414. — Action by seller; buyer's defenses.
 - (1). In general.
 - (2). Breach of warranty as defense.
- 2415. — Action by buyer; seller's defenses.
- 2416. Set-off and counterclaim.
- 2417. — In general.
- 2418. — Buyer's set-off and counterclaim against seller.
 - (1). In general.
 - (2). Breach of warranty.
- 2419. — Seller's set-off and counterclaim against buyer.
- 2420. Jurisdiction and venue.
- 2421. Time to sue; limitations and laches.

XI. ACTIONS.(Cont'd)

- 2422. — In general.
- 2423. — Action by seller.
- 2424. — Action by buyer.
- 2425. — Good faith and fair dealing.
- 2426. — Rescission.
- 2427. Parties.
- 2428. Standing.
- 2429. Pleading.
- 2430. — In general.
- 2431. — Particular actions and claims.
 - (1). In general.
 - (2). Action by seller.
 - (3). Action by buyer.
 - (4). Good faith and fair dealing.
 - (5). Rescission.
- 2432. — Answer and subsequent pleadings.
 - (1). In general.
 - (2). Buyer's assertion of breach of warranty.
- 2433. — Variance between pleadings and proof.
- 2434. Trial or hearing.
- 2435. — In general.

Evidence, see XI(C), XI(D), XI(E). Questions of law or fact, see XI(F). Instructions, see XI(G).
- 2436. — Verdict and findings.
- 2437. Judgment, order, or decree.

Remedies, see X.
- 2438. Costs and fees.

(B) ACTIONS ON WARRANTIES.

1. IN GENERAL.

- 2451. In general.
- 2452. Existence, nature, and form of action.
- 2453. Conditions precedent.
- 2454. Defenses.
- 2455. — In general.
- 2456. — Misuse or unreasonable use.
- 2457. — Negligence or fault.
- 2458. — Assumption of risk.
- 2459. Set-off and counterclaim.
- 2460. Jurisdiction and venue.
- 2461. Time to sue; limitations and laches.
- 2462. Parties.
- 2463. Standing.
- 2464. Pleading.
- 2465. — In general.

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XI. ACTIONS.(Cont'd)

- 2466. — Particular actions and claims.
- 2467. — Answer and subsequent pleadings.
- 2468. — Variance between pleadings and proof.
- 2469. Trial or hearing.
- 2470. — In general.
Evidence, see XI(C), XI(D), XI(E). Questions of law or fact, see XI(F). Instructions, see XI(G).
- 2471. — Verdict and findings.
- 2472. Judgment, order, or decree.
Remedies, see X.
- 2473. Costs and fees.

2. ACTIONS FOR RESCISSION OR REDHIBITION.

- 2501. In general.
- 2502. Existence, nature, and form of action.
- 2503. Conditions precedent.
- 2504. Defenses.
- 2505. Set-off and counterclaim.
- 2506. Jurisdiction and venue.
- 2507. Time to sue; limitations and laches.
- 2508. Parties.
- 2509. Standing.
- 2510. Pleading.
- 2511. — In general.
- 2512. — Particular actions and claims.
- 2513. — Answer and subsequent pleadings.
- 2514. — Variance between pleadings and proof.
- 2515. Trial or hearing.
- 2516. — In general.
Evidence, see XI(C), XI(D), XI(E). Questions of law or fact, see XI(F). Instructions, see XI(G).
- 2517. — Verdict and findings.
- 2518. Judgment, order, or decree.
Remedies, see X.
- 2519. Costs and fees.

(C) PRESUMPTIONS, INFERENCES, AND BURDEN OF PROOF.

- 2601. In general.
- 2602. Nature and subject matter of sale.
- 2603. Parties to transaction or contract.
- 2604. Nature and formation of contract.
- 2605. — In general.
- 2606. — Offer, acceptance, and consideration.
- 2607. Validity and enforceability of contract.

XI. ACTIONS.(Cont'd)

- 2608. — In general.
- 2609. — Misrepresentation and fraud.
- 2610. — Unreasonable, oppressive, or unconscionable contract.
- 2611. Terms of contract; rights and obligations of parties.
- 2612. — In general.
- 2613. — Goods subject to contract in general.
- 2614. — Delivery and acceptance.
 - (1). In general.
 - (2). Quality, value, fitness, and condition of goods.
 - (3). Quantity of goods.
 - (4). Acceptance or rejection of non-conforming goods.
 - (5). Revocation of acceptance.
 - (6). Sale on trial or approval; contracts for sale or return.
- 2615. — Amounts payable; price.
- 2616. — Duties and expenses of transportation.
- 2617. — Payment.
- 2618. — Transfer of title; risk of loss.
- 2619. — Assurance of performance.
- 2620. — Repudiation.
- 2621. — Excuses for nonperformance or breach.
- 2622. — Waiver and estoppel.
- 2623. Duration of contract.
- 2624. — In general.
- 2625. — Cancellation or termination of contract.
- 2626. Assignment of contract.
- 2627. Modification of contract.
- 2628. Warranties.
- 2629. — In general.
- 2630. — Express warranties.
- 2631. — Warranties imposed by law; implied warranties.
- 2632. — Exclusion, modification, or limitation of warranties.
- 2633. — Cumulation and conflict of warranties.
- 2634. — Parties to warranties, privity, and third-party beneficiaries.
- 2635. — Notice and opportunity to cure.
- 2636. — Waiver of breach.
- 2637. Remedies.

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XI. ACTIONS.(Cont'd)

- 2638. — In general.
- 2639. — Rescission in general.
- 2640. — Monetary remedies and damages in general.
- 2641. — Price or value of goods in general.
- 2642. — Resale of goods and price thereof.
- 2643. — Procurement and price of substitute goods; "cover".
- 2644. — Market price or value.
- 2645. — Additional or incidental damages; expenses.
- 2646. — Special, indirect, or consequential damages.
- 2647. — Lost profits.
- 2648. — Mitigation or reduction of loss.
- 2649. — Punitive or exemplary damages.
- 2650. — Exclusive, concurrent, and conflicting remedies; election.
- 2651. — Contractual modification or limitation of remedy.

(D) ADMISSIBILITY OF EVIDENCE.

- 2661. In general.
- 2662. Nature and subject matter of sale.
- 2663. Parties to transaction or contract.
- 2664. Nature and formation of contract.
- 2665. — In general.
- 2666. — Offer, acceptance, and consideration.
- 2667. Validity and enforceability of contract.
- 2668. — In general.
- 2669. — Misrepresentation and fraud.
- 2670. — Unreasonable, oppressive, or unconscionable contract.
- 2671. Terms of contract; rights and obligations of parties.
- 2672. — In general.
- 2673. — Goods subject to contract in general.
- 2674. — Delivery and acceptance.
 - (1). In general.
 - (2). Quality, value, fitness, and condition of goods.
 - (3). Quantity of goods.
 - (4). Acceptance or rejection of non-conforming goods.
 - (5). Revocation of acceptance.

XI. ACTIONS.(Cont'd)

- (6). Sale on trial or approval; contracts for sale or return.
- 2675. — Amounts payable; price.
- 2676. — Duties and expenses of transportation.
- 2677. — Payment.
- 2678. — Transfer of title; risk of loss.
- 2679. — Assurance of performance.
- 2680. — Repudiation.
- 2681. — Excuses for nonperformance or breach.
- 2682. — Waiver and estoppel.
- 2683. Duration of contract.
- 2684. — In general.
- 2685. — Cancellation or termination of contract.
- 2686. Assignment of contract.
- 2687. Modification of contract.
- 2688. Warranties.
 - 2689. — In general.
 - 2690. — Express warranties.
 - 2691. — Warranties imposed by law; implied warranties.
- 2692. — Exclusion, modification, or limitation of warranties.
- 2693. — Cumulation and conflict of warranties.
- 2694. — Parties to warranties, privity, and third-party beneficiaries.
- 2695. — Notice and opportunity to cure.
- 2696. — Waiver of breach.
- 2697. Remedies.
 - 2698. — In general.
 - 2699. — Rescission in general.
- 2700. — Monetary remedies and damages in general.
- 2701. — Price or value of goods in general.
- 2702. — Resale of goods and price thereof.
- 2703. — Procurement and price of substitute goods; "cover".
- 2704. — Market price or value.
- 2705. — Additional or incidental damages; expenses.
- 2706. — Special, indirect, or consequential damages.
- 2707. — Lost profits.
- 2708. — Mitigation or reduction of loss.

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XI. ACTIONS.(Cont'd)

- 2709. — Punitive or exemplary damages.
- 2710. — Exclusive, concurrent, and conflicting remedies; election.
- 2711. — Contractual modification or limitation of remedy.

(E) WEIGHT AND SUFFICIENCY OF EVIDENCE.

- 2721. In general.
- 2722. Nature and subject matter of sale.
- 2723. Parties to transaction or contract.
- 2724. Nature and formation of contract.
- 2725. — In general.
- 2726. — Offer, acceptance, and consideration.
- 2727. Validity and enforceability of contract.
- 2728. — In general.
- 2729. — Misrepresentation and fraud.
- 2730. — Unreasonable, oppressive, or unconscionable contract.
- 2731. Terms of contract; rights and obligations of parties.
- 2732. — In general.
- 2733. — Goods subject to contract in general.
- 2734. — Delivery and acceptance.
 - (1). In general.
 - (2). Quality, value, fitness, and condition of goods.
 - (3). Quantity of goods.
 - (4). Acceptance or rejection of non-conforming goods.
 - (5). Revocation of acceptance.
 - (6). Sale on trial or approval; contracts for sale or return.
- 2735. — Amounts payable; price.
- 2736. — Duties and expenses of transportation.
- 2737. — Payment.
- 2738. — Transfer of title; risk of loss.
- 2739. — Assurance of performance.
- 2740. — Repudiation.
- 2741. — Excuses for nonperformance or breach.
- 2742. — Waiver and estoppel.
- 2743. Duration of contract.
- 2744. — In general.
- 2745. — Cancellation or termination of contract.
- 2746. Assignment of contract.

XI. ACTIONS.(Cont'd)

- 2747. Modification of contract.
- 2748. Warranties.
- 2749. — In general.
- 2750. — Express warranties.
- 2751. — Warranties imposed by law; implied warranties.
- 2752. — Exclusion, modification, or limitation of warranties.
- 2753. — Cumulation and conflict of warranties.
- 2754. — Parties to warranties, privity, and third-party beneficiaries.
- 2755. — Notice and opportunity to cure.
- 2756. — Waiver of breach.
- 2757. Remedies.
- 2758. — In general.
- 2759. — Rescission in general.
- 2760. — Monetary remedies and damages in general.
- 2761. — Price or value of goods in general.
- 2762. — Resale of goods and price thereof.
- 2763. — Procurement and price of substitute goods; "cover".
- 2764. — Market price or value.
- 2765. — Additional or incidental damages; expenses.
- 2766. — Special, indirect, or consequential damages.
- 2767. — Lost profits.
- 2768. — Mitigation or reduction of loss.
- 2769. — Punitive or exemplary damages.
- 2770. — Exclusive, concurrent, and conflicting remedies; election.
- 2771. — Contractual modification or limitation of remedy.

(F) QUESTIONS OF LAW OR FACT.

- 2781. In general.
- 2782. Nature and subject matter of sale.
- 2783. Parties to transaction or contract.
- 2784. Nature and formation of contract.
- 2785. — In general.
- 2786. — Offer, acceptance, and consideration.
- 2787. Validity and enforceability of contract.
- 2788. — In general.
- 2789. — Misrepresentation and fraud.

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XI. ACTIONS.(Cont'd)

- 2790. — Unreasonable, oppressive, or unconscionable contract.
- 2791. Terms of contract; rights and obligations of parties.
- 2792. — In general.
- 2793. — Goods subject to contract in general.
- 2794. — Delivery and acceptance.
 - (1). In general.
 - (2). Quality, value, fitness, and condition of goods.
 - (3). Quantity of goods.
 - (4). Acceptance or rejection of non-conforming goods.
 - (5). Revocation of acceptance.
 - (6). Sale on trial or approval; contracts for sale or return.
- 2795. — Amounts payable; price.
- 2796. — Duties and expenses of transportation.
- 2797. — Payment.
- 2798. — Transfer of title; risk of loss.
- 2799. — Assurance of performance.
- 2800. — Repudiation.
- 2801. — Excuses for nonperformance or breach.
- 2802. — Waiver and estoppel.
- 2803. Duration of contract.
- 2804. — In general.
- 2805. — Cancellation or termination of contract.
- 2806. Assignment of contract.
- 2807. Modification of contract.
- 2808. Warranties.
- 2809. — In general.
- 2810. — Express warranties.
- 2811. — Warranties imposed by law; implied warranties.
- 2812. — Exclusion, modification, or limitation of warranties.
- 2813. — Cumulation and conflict of warranties.
- 2814. — Parties to warranties, privity, and third-party beneficiaries.
- 2815. — Notice and opportunity to cure.
- 2816. — Waiver of breach.
- 2817. Remedies.
- 2818. — In general.
- 2819. — Rescission in general.

XI. ACTIONS.(Cont'd)

- 2820. — Monetary remedies and damages in general.
- 2821. — Price or value of goods in general.
- 2822. — Resale of goods and price thereof.
- 2823. — Procurement and price of substitute goods; "cover".
- 2824. — Market price or value.
- 2825. — Additional or incidental damages; expenses.
- 2826. — Special, indirect, or consequential damages.
- 2827. — Lost profits.
- 2828. — Mitigation or reduction of loss.
- 2829. — Punitive or exemplary damages.
- 2830. — Exclusive, concurrent, and conflicting remedies; election.
- 2831. — Contractual modification or limitation of remedy.

(G) INSTRUCTIONS.

- 2841. In general.
- 2842. Nature and subject matter of sale.
- 2843. Parties to transaction or contract.
- 2844. Nature and formation of contract.
- 2845. — In general.
- 2846. — Offer, acceptance, and consideration.
- 2847. Validity and enforceability of contract.
- 2848. — In general.
- 2849. — Misrepresentation and fraud.
- 2850. — Unreasonable, oppressive, or unconscionable contract.
- 2851. Terms of contract; rights and obligations of parties.
- 2852. — In general.
- 2853. — Goods subject to contract in general.
- 2854. — Delivery and acceptance.
 - (1). In general.
 - (2). Quality, value, fitness, and condition of goods.
 - (3). Quantity of goods.
 - (4). Acceptance or rejection of non-conforming goods.
 - (5). Revocation of acceptance.
 - (6). Sale on trial or approval; contracts for sale or return.

343. SALES

XI. ACTIONS.(Cont'd)

- 2855. — Amounts payable; price.
- 2856. — Duties and expenses of transportation.
- 2857. — Payment.
- 2858. — Transfer of title; risk of loss.
- 2859. — Assurance of performance.
- 2860. — Repudiation.
- 2861. — Excuses for nonperformance or breach.
- 2862. — Waiver and estoppel.
- 2863. Duration of contract.
- 2864. — In general.
- 2865. — Cancellation or termination of contract.
- 2866. Assignment of contract.
- 2867. Modification of contract.
- 2868. Warranties.
- 2869. — In general.
- 2870. — Express warranties.
- 2871. — Warranties imposed by law; implied warranties.
- 2872. — Exclusion, modification, or limitation of warranties.
- 2873. — Cumulation and conflict of warranties.
- 2874. — Parties to warranties, privity, and third-party beneficiaries.
- 2875. — Notice and opportunity to cure.
- 2876. — Waiver of breach.
- 2877. Remedies.
- 2878. — In general.
- 2879. — Rescission in general.
- 2880. — Monetary remedies and damages in general.
- 2881. — Price or value of goods in general.
- 2882. — Resale of goods and price thereof.
- 2883. — Procurement and price of substitute goods; "cover".
- 2884. — Market price or value.
- 2885. — Additional or incidental damages; expenses.
- 2886. — Special, indirect, or consequential damages.
- 2887. — Lost profits.
- 2888. — Mitigation or reduction of loss.
- 2889. — Punitive or exemplary damages.

XI. ACTIONS.(Cont'd)

- 2890. — Exclusive, concurrent, and conflicting remedies; election.
- 2891. — Contractual modification or limitation of remedy.

XII. RIGHTS AND LIABILITIES AS TO THIRD PERSONS.

(A) IN GENERAL.

- 2901. In general.
- 2902. Particular cases and contexts in general.

(B) TRANSFEREES AND PURCHASERS IN GENERAL.

- 2911. In general.
- 2912. Extent of title or interest acquired from transferor in general.
- 2913. Subsequent transferees or purchasers in general.
- 2914. — In general.
- 2915. — From seller.
- 2916. — From buyer.

(C) GOOD-FAITH PURCHASERS.

- 2921. In general.
- 2922. Application of doctrine of market overt or caveat emptor.
- 2923. "Ordinary course of business" in general.
- 2924. Factors affecting whether transferor may pass good title.
- 2925. — In general.
- 2926. — Transferor with voidable title.
- 2927. — Goods delivered to or in possession of transferor.
- 2928. — Goods procured by transferor through fraud or deceit.
- 2929. — Method by which transferor paid for goods.
 - (1). In general.
 - (2). Cash, check, or credit.
 - (3). Bad or dishonored checks.
- 2930. Notice to purchaser.
- 2931. — In general.
- 2932. — Actual or constructive notice.
- 2933. — Duty to make investigation, and facts putting purchaser on inquiry.
- 2934. — Filing, recording, and registration.
- 2935. Consideration paid by purchaser.
- 2936. — In general.

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XII. RIGHTS AND LIABILITIES AS TO THIRD PERSONS.(Cont'd)

- 2937. — Payment of value.
- 2938. — Pre-existing debt.
- 2939. Title and rights acquired by good-faith purchasers.
- 2940. Estoppel to assert title against good-faith purchasers.
- 2941. Equities and defenses against good-faith purchasers.
- 2942. Purchasers from good-faith purchasers.

(D) ENTRUSTED GOODS.

- 2951. In general.
- 2952. Entrustment to merchant.
- 2953. Particular goods.
- 2954. — In general.
- 2955. — Motor vehicles.
- 2956. — Art and jewelry.

(E) LOST, STOLEN, OR DAMAGED GOODS.

- 2961. In general.
- 2962. Particular goods.
- 2963. — In general.
- 2964. — Motor vehicles.
- 2965. — Art and jewelry.

(F) CREDITORS' RIGHTS AND LIABILITIES.

- 2971. In general.
- 2972. Creditors of seller.
- 2973. Creditors of buyer.
- 2974. Rights and liabilities as to good-faith purchasers.

(G) ACTIONS.

- 2981. In general.
- 2982. Existence, nature, and form of action.
- 2983. Conditions precedent.
- 2984. Defenses; set-off and counterclaim.
- 2985. Time to sue; limitations and laches.
- 2986. Parties; standing.
- 2987. Pleading.
- 2988. Evidence.
- 2989. — In general.
- 2990. — Presumptions, inferences, and burden of proof.
- 2991. — Weight and sufficiency.
- 2992. Trial or hearing.
- 2993. — In general.

XII. RIGHTS AND LIABILITIES AS TO THIRD PERSONS.(Cont'd)

- 2994. — Questions of law or fact.
- 2995. — Instructions.
- 2996. — Verdict and findings.
- 2997. Judgment, order, or decree.
- 2998. Costs and fees.

XIII. CONDITIONAL SALES.

Secured transactions, particularly those within the scope of Article 9 of the Uniform Commercial Code, see SECURED TRANSACTIONS. Chattel mortgages, see CHATTEL MORTGAGES.

- 3001. In general; nature of sales on condition.
- 3002. What law governs.
- 3003. Statutory provisions.
- 3004. Conditional sales distinguished from other transactions.
- 3005. — In general.
- 3006. — Sale with reservation of lien.
- 3007. — Lease or contract of hiring.
- 3008. — Consignment for sale or other agency.
- 3009. Conditions which may be imposed.
- 3010. Contracts creating conditions on transfer of title in general.
- 3011. Necessity of writing.
- 3012. Form and contents of instrument.
- 3013. Execution and delivery of instrument.
- 3014. Affidavit accompanying instrument.
- 3015. Validity of conditions.
- 3016. Filing, recording, and registration.
- 3017. Construction and operation of conditions as between parties.
- 3018. — In general.
- 3019. — Conditions precedent in general.
- 3020. — Payment of price.
- 3021. — Conditions subsequent.
- 3022. Operation and effect of conditions as to third persons.
- 3023. — In general.
- 3024. — Filing, recording, and registration.
- 3025. — Purchasers from buyer in general.
- 3026. — Purchasers at judicial sale.
- 3027. — Creditors of or purchasers from seller.
- 3028. — Bona fide purchasers from buyer.
 - (1). In general.
 - (2). Filing, recording, and registration.
- 3029. — Creditors of buyer.

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XIII. CONDITIONAL SALES.(Cont'd)

- (1). In general.
- (2). Filing, recording, and registration.
3030. Effect of assignment of contract.
3031. Performance or breach of conditions.
3032. Waiver of condition or of forfeiture for breach.
3033. — In general.
3034. — Delivery of property to buyer.
3035. — Taking new or additional security.
3036. — Enforcing or attempting to enforce payment of price.
3037. — Extension of time for payment.
3038. — Acceptance of payment after default.
3039. — Evidence and question for jury.
3040. Remedies of seller.
3041. — In general.
3042. — Nature, form and election of remedy.
3043. — Recovery of goods or proceeds thereof; actions for conversion.
 - (1). In general.
 - (2). Effect of recovery of judgment for price.
 - (3). Conditions precedent.
 - (4). Demand or tender.
 - (5). Defenses.
 - (6). Parties.
 - (7). Pleading and evidence.
 - (8). Trial.
 - (9). Damages, judgment or execution.
 - (10). Effect of recovery of property in general.
 - (11). Recovery of price after retaking property.
 - (12). Liability to refund money paid by buyer.
 - (13). Recovery for use of property.
3044. — Resale.
3045. — Recovery of price or value.
3046. — Breach of contract by buyer.
3047. — Lien and foreclosure thereof.
3048. — Against third persons.
 - (1). In general.
 - (2). Recovery of goods or proceeds thereof.
 - (3). — In general.

XIII. CONDITIONAL SALES.(Cont'd)

- (4). — Conditions precedent and defenses.
- (5). — Time for proceeding, and laches.
- (6). — Parties.
- (7). — Pleading and evidence.
- (8). — Trial.
- (9). — Amount and items of recovery.
- (10). Conversion of or injury to goods and recovery of price or value.
3049. Remedies of buyer.
3050. Remedies of subsequent purchasers.
3051. Remedies of creditors.
3052. Criminal responsibility for removal or transfer of property.

344. SALVAGE

SUBJECTS INCLUDED

Allowances made by law out of the value or proceeds of vessels or cargoes saved in whole or in part from danger or loss, to persons by whose assistance they were so saved, whether made by way of compensation or otherwise

Nature of the services for which, and grounds upon which, such allowances may be made

What property may be subject thereto

Who may be entitled to salvage and waiver or forfeiture thereof

Amount to be awarded and apportionment thereof

Lien for salvage and waiver, discharge, or extinguishment thereof

Priorities of liens

Proceedings for recovery of salvage

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Admiralty jurisdiction and procedure in general, see ADMIRALTY

I. RIGHT TO COMPENSATION, §§1-23.

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II. AMOUNT AND APPORTIONMENT, ⌘24–38.

III. LIEN AND RECOVERY, ⌘39–52.

I. RIGHT TO COMPENSATION.

1. Nature and grounds in general.
2. What law governs.
3. Vessels and other property subject to salvage.
4. Derelict.
5. Existence and extent of peril.
6. Nature of service.
7. — In general.
8. — Peril at sea.
9. — Stranding.
10. — Fire.
11. — Sunken vessel or cargo.
12. — Recapture.
13. — Towage.
14. — Saving life.
15. Request for or acceptance of services.
16. Services rendered under contract.
17. Beneficial result of services.
18. Vessels and persons entitled to compensation.
19. Different sets of salvors, and successive salvors.
20. Vessels or persons contributing to peril.
21. Forfeiture by negligence or misconduct.
22. Liabilities of salvors for negligence or wrongful acts.
23. Persons and property liable.

II. AMOUNT AND APPORTIONMENT.

24. Theory and purpose of remuneration.
25. Discretion of court as to amount.
26. Elements in determination of amount.
27. Amount awarded and computation in general.
28. Derelict.
29. Peril at sea.
30. Stranding.
31. Fire.
32. Sunken vessel or cargo.
33. Recapture.
34. Towage.
35. Services and expenses exceeding value of property saved.
36. Contracts as to compensation.

II. AMOUNT AND APPORTIONMENT.(Cont'd)

37. Apportionment among persons and property liable.
38. Apportionment among salvors.

III. LIEN AND RECOVERY.

39. Nature and incidents of lien.
40. Priority of lien.
41. Waiver, loss, or discharge of lien.
42. Suits for salvage.
- 42.1. — In general.
43. — Nature and form of remedy.
44. — Right of action and defenses.
45. — Jurisdiction.
- 45.5. — Time to sue and limitations.
46. — Parties.
47. — Pleading.
48. — Evidence.
49. — Trial or hearing.
50. — Decree and enforcement thereof.
51. — Appeal.
52. — Costs.

346. SCIRE FACIAS

SUBJECTS INCLUDED

Writs of scire facias for enforcement of obligations of record
Nature and scope of the remedy in general
Grounds of such writs and defenses thereto
To and against whom and on what matters of record they are allowed
Jurisdiction to grant and proceedings to obtain the writ
Issuance, requisites and validity of writs, service thereof, return thereto and proceedings thereon

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Writs of scire facias and proceedings by motion, etc., or by action, to—
Continue or revive actions, see ABATEMENT AND REVIVAL

348. SEAMEN

Enforce forfeited bail bonds and recognizances, see **BAIL, RECOGNIZANCES**

Foreclose mortgages or mechanics' liens, see **MORTGAGES AND DEEDS OF TRUST, MECHANICS' LIENS**

Revive judgments or executions, see **JUDGMENT, CREDITORS' REMEDIES**

1. Nature and scope of remedy.
2. Constitutional and statutory provisions.
3. Grounds.
4. Defenses.
5. Jurisdiction and authority to issue.
6. Time for issuance.
7. Parties.
8. Form and requisites of writ.
9. Service and return of writ.
10. Pleading.
11. Evidence.
12. Trial.
13. Judgment and enforcement thereof.
14. Appeal and error.
15. Costs.

347. SEALS

SUBJECTS INCLUDED

Signs and devices, representing parties to instruments in writing, attached or affixed to such instruments to attest their genuineness or their formal execution

Necessity, attaching or affixing, and sufficiency thereof in general

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Particular classes of instruments, seals affixed to, see **DEEDS** and other specific topics

Particular classes of persons, officers, or bodies corporate or politic, seals of, see **CORPORATIONS AND BUSINESS ORGANIZATIONS** and other specific topics

1. Necessity and use in general.
2. Statutory provisions.
3. Requisites and mode of impressing or affixing.

4. Adopting seal previously affixed.
5. Recital or other recognition in instrument.
6. Evidence as to seals.
- 6.5. Questions for jury.
7. Loss of seal.

348. SEAMEN

SUBJECTS INCLUDED

Employment, regulation, and protection of seamen

Mutual rights, duties, and liabilities of seamen and of owners, charterers, and masters of vessels on which they are employed

Liabilities to seamen of vessels, their cargoes and freight

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Labor relations involving seamen, see **LABOR AND EMPLOYMENT**

Longshoremen and similar workers, see **SHIPPING, WORKERS' COMPENSATION**

Masters of vessels, see **SHIPPING**

Pilots, see **PILOTS**

Salvage by seamen, see **SALVAGE**

1. Power to regulate and protect.
2. Who are seamen.
3. What law governs.
4. Statutory provisions.
5. Shipping commissioners.
6. Employment in general.
7. Shipping articles.
8. Lists, certificates, and return of crew.
9. Seaworthiness of vessel.
10. Provisions and supplies.
11. Medical treatment and maintenance of disabled seamen.
 - (1). In general.
 - (2). Duty of ship to carry physician or medical supplies.
 - (3). Duty of ship to deviate from course to procure medical assistance.

348. SEAMEN

- (4). Persons entitled.
- (5). Fault or negligence of seaman or fellow servants.
- (6). Extent and duration of liability.
- (7). Subsequent conduct or conditions affecting liability.
- (8). Mistaken diagnosis, neglect, or improper treatment.
- (9). Actions.
- 12. Discharge.
- 13. Expenses of return to port of shipment.
- 14. Performance of services.
- 15. Wages.
- 15.1. — In general.
- 16. — Right in general.
- 17. — Amount.
- 18. — Extra wages.
- 19. — Wages on discharge.
- 20. — Deductions and offsets.
- 21. — Forfeiture and fines.
 - (1). In general.
 - (2). Misconduct.
 - (3). Absence from vessel in general.
 - (4). Desertion.
 - (4.1). — In general.
 - (5). — On deviation from voyage.
 - (6). — Provocation, excuse, or justification.
 - (7). Requisites and necessity of entry on log book.
- 22. — Persons liable.
- 23. — Advances.
- 24. — Payment.
- 25. — Release.
- 26. — Actions.
- 27. — Lien.
 - (5). In general.
 - (1). Creation and existence in general.
 - (2). Persons entitled.
 - (3). Services in port.
 - (4). Services rendered on vessel in custody of law.
 - (5). Property subject.
 - (5.1). — In general.
 - (6). — Cargo or freight.
 - (7). — Vessels.
 - (8). Amount and extent.
 - (9). Priority.
 - (10). Assignment of claim or lien.
 - (11). Waiver, loss, or discharge.
 - (12). Enforcement.

- 28. Share in earnings.
- 29. Personal injuries.
 - (1). In general.
 - (2). Tools, machinery, appliances, and places for work.
 - (3). Fellow servants.
 - (4). Assumption of risk, contributory negligence, and division of damages.
 - (5). Action for damages in general.
 - (5.1). Nature and form of remedy.
 - (5.2). What law governs.
 - (5.3). Persons entitled to sue.
 - (5.4). Persons against whom suit may be brought.
 - (5.5). Jurisdiction and venue.
 - (5.6). Limitations and laches.
- See also LIMITATION OF ACTIONS.*
- (5.7). Parties.
- (5.8). Process.
- (5.9). Pleading in general.
- (5.10). Issues, proof, and variance.
- (5.11). Evidence in general.
- (5.12). Presumptions and burden of proof.
- (5.13). Admissibility of evidence.
- (5.14). Weight and sufficiency of evidence.
- (5.15). Trial in general.
- (5.16). Questions for jury.
- (5.17). Instructions.
- (5.18). Verdict and findings.
- (5.19). Judgment.
- (5.20). Lien.
- 30. Discipline and punishment.
- 31. Loss of clothing and effects.
- 32. Wages and effects of deceased seamen.
- 33. Penalties and forfeitures for violations of regulations.
- 34. Offenses.

349. SEARCHES AND SEIZURES

SUBJECTS INCLUDED

Examination of persons or places for discovery of property stolen or otherwise unlaw-

349. SEARCHES AND SEIZURES

fully obtained or held, or of evidence of the commission of an offense

Taking into legal custody such property or proofs, or property forfeited for violation of law

Nature and scope of such remedies in general
Constitutional and statutory provisions relating to such searches and seizures

In what cases and to and against whom and in respect of what property they are allowed
Jurisdiction over and proceedings to obtain searches or seizures

Issuance, requisites and validity of search warrants and warrants for seizure, etc.

Execution of warrants, making searches and seizures, proceedings to enforce seizures, and disposition of property seized

Liabilities for wrongfully procuring or making searches or seizures

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

[Note exceptions indicated below, as at ¶13]

Arrest, searches incidental to, see ARREST

Due process violations, see CONSTITUTIONAL LAW XXVII(G)23

Environmental protection of plants and wildlife, see ENVIRONMENTAL LAW ¶546

Evidence wrongfully obtained, see CRIMINAL LAW ¶392.1 et seq. and EVIDENCE ¶154

Forfeiture for crime, grounds, see FORFEITURES and specific topics involving forfeitures

International law, operation as to seizures, see INTERNATIONAL LAW

Military cases decided by military courts, see MILITARY JUSTICE in the Federal Practice Digests

Particular objects, subjects, or purposes at search or seizure:

Automobile traffic offenses, search after stop or arrest, see AUTOMOBILES ¶349

Coast Guard searches of vessels, see SHIPPING ¶9

Customs or border searches, see CUSTOMS DUTIES ¶126

Electronic surveillance, see TELECOMMUNICATIONS ¶491 et seq

Fires, see FIRES ¶9

Fish and game, see FISH ¶16 and GAME ¶10

Food, see FOOD ¶24

Gambling and lotteries, see GAMING ¶60 and LOTTERIES ¶19

Internal Revenue searches, see INTERNAL REVENUE ¶5125-5128

Intoxicating liquor, see INTOXICATING LIQUORS ¶244 et seq

Medicinal drugs and devices, cosmetics, and animal drugs, seizure of, see HEALTH ¶330

Narcotics, substances subject to abuse and addiction, and related paraphernalia, see CONTROLLED SUBSTANCES IV

National security foreign trade restrictions, see WAR AND NATIONAL EMERGENCY ¶509

Obscenity, see OBSCENITY VI

Parolees and probationers, see PARDON AND PAROLE ¶68 and SENTENCING AND PUNISHMENT IX(H)

Postal searches, see POSTAL SERVICE ¶47

Prison inmates, staff, and visitors, see PRISONS ¶134, 359, 385, 391

School searches, see EDUCATION ¶742-745

Workplace safety searches and inspections, see LABOR AND EMPLOYMENT ¶2600, 2661

I. IN GENERAL, ¶11-100.

II. WARRANTS, ¶101-140.

III. EXECUTION AND RETURN OF WARRANTS, ¶141-160.

IV. STANDING TO OBJECT, ¶161-170.

V. WAIVER AND CONSENT, ¶171-190.

VI. JUDICIAL REVIEW OR DETERMINATION, ¶191-202.

I. IN GENERAL.

11. In general.

12. Constitutional and statutory provisions.

13. What constitutes search or seizure.

Includes all cases, whatever the nature or purpose of the activity.

13.1. — In general.

14. — Taking samples of blood, or other physical specimens; handwriting exemplars.

349. SEARCHES AND SEIZURES

I. IN GENERAL.(Cont'd)

15. — Taking items abandoned, voluntarily surrendered, or sold.
16. — Observation; items in plain view.
17. — Interior of premises, view from outside.
18. — Vehicles.
19. — Use of artificial light or visual aids.
20. — Aerial surveillance.
21. — Use of electronic devices; tracking devices or “beepers.”
22. — Scent; use of dogs.
23. Fourth Amendment and reasonableness in general.
24. Necessity of and preference for warrant, and exceptions in general.
25. Persons, places and things protected.
- 25.1. — In general.
26. — Expectation of privacy.
27. — Curtilage or open fields; yards and outbuildings.
28. — Abandoned, surrendered, or disclaimed items.
29. — Containers.
30. Items subject to seizure in general; nexus.
31. Persons subject to limitations; governmental involvement.
Includes all cases, whatever the nature or purpose of the activity, excepting school searches, for which see EDUCATION ¶742-745, and communication company interception, TELECOMMUNICATIONS ¶1440.
- 31.1. — In general.
32. — Application of federal standards to states and territories.
33. — Private persons.
34. — Carriers and communication companies.
35. — Foreign states or officers.
36. Circumstances affecting validity of warrantless search, in general.
- 36.1. — In general.
37. — Nature and source of information in general; suspicion or conjecture.
38. — Hearsay; informers; collective knowledge.
39. — Particular concrete cases.
40. Probable cause.
- 40.1. — In general.
41. — Hearsay; informers; collective knowledge.

I. IN GENERAL.(Cont'd)

42. Emergencies and exigent circumstances; opportunity to obtain warrant.
- 42.1. — In general.
43. — Pursuit.
44. — Presence of probable cause.
45. — Likely escape or loss of evidence.
46. Offense in officer's presence.
47. Plain view from lawful vantage point.
- 47.1. — In general.
48. — Inadvertency requirement.
49. — Nature of items seized; nexus.
50. — Closed containers; luggage.
51. — Use of artificial light or visual aids.
52. Arrested persons, search of, in general.
Excludes search incident to arrest, see ARREST ¶71.1 and AUTOMOBILES ¶349.
53. Scope, conduct, and duration of warrantless search.
- 53.1. — In general.
54. — Mode of entry; warning and announcement.
55. — Skin, strip, and body searches.
56. — Aerial surveillance.
57. Temporary investigative detention of goods.
58. Inventory or booking search.
59. Vehicles, vessels, and aircraft in general.
60. Motor vehicles.
- 60.1. — In general.
61. — Expectation of privacy.
62. — Probable or reasonable cause.
63. — Plain view.
64. — Emergencies or exigencies.
65. — Scope; trunk, compartments, containers, and luggage.
66. — Inventory and impoundment; time and place of search.
67. Weapons; protective searches.
- 67.1. — In general.
68. — Vehicle searches.
69. — Plain view.
70. — Protective searches.
71. — Protective sweep; security check.
72. Airport and boarding searches.
73. Aliens and enemies.
74. Income tax returns.
75. Witnesses; subpoenas.
76. Corporations; offices and records.
77. Safe deposit boxes.

349. SEARCHES AND SEIZURES

I. IN GENERAL.(Cont'd)

- 78. Samples and tests; identification procedures.
- 79. Administrative inspections and searches; regulated businesses.
- 80. Effect of illegal conduct; trespass.
Excludes admissibility of evidence obtained through illegal search, see CRIMINAL LAW §392.1 et seq. and EVIDENCE §154.
- 80.1. — In general.
- 81. — Invalid warrant.
- 82. — Curing illegality; justification by result.
- 83. Seizure proceedings against property forfeited.
- 84. Disposition of property seized.
- 85. Liability for wrongful search and seizure; actions.

II. WARRANTS.

- 101. In general.
- 102. Permissible subjects, objects, and purposes.
- 103. Authority to issue.
- 103.1. — In general.
- 104. — Impartial magistrate requirement.
- 105. Complaint, application or affidavit.
- 105.1. — In general.
- 106. — Persons who may apply or sign affidavit.
- 107. — Formal requirements.
- 108. — Necessity for writing; oral presentation or supplementation.
- 109. Proceedings for issuance.
- 110. Telephone warrants; facsimile transmissions.
- 111. Factual showing, in general.
- 112. False, inaccurate or perjured information; disclosure.
- 113. Probable or reasonable cause.
- 113.1. — In general.
- 114. — Particular concrete applications.
- 115. Competency of information; hearsay.
- 115.1. — In general.
- 116. — Information from others in general.
- 117. — Reliability or credibility; corroboration.
- 118. — Anonymous or confidential informants.
- 119. — Citizens, victims, or officers.

II. WARRANTS.(Cont'd)

- 120. — Legality of information.
- 121. Time for application or issuance; staleness.
- 121.1. — In general.
- 122. — Anticipatory warrants.
- 123. Form and contents of warrant; signature.
- 123.1. — In general.
- 124. — Particularity or generality and overbreadth in general.
- 125. — Objects or information sought.
- 126. — Places, objects, or persons to be searched.
- 127. — Error or misdescription.
- 128. Modification or vacation.
- 129. Administrative warrants.

III. EXECUTION AND RETURN OF WARRANTS.

- 141. In general.
- 142. Persons participating; place of search.
- 143. Manner of entry; warning and announcement.
- 143.1. — In general.
- 144. — Warrant directions; supporting showing.
- 145. Time of execution.
- 145.1. — In general.
- 146. — Night-time execution; warrant directions and supporting showing.
- 147. Scope of search.
- 147.1. — In general.
- 148. — Places, persons, and things within scope of warrant.
- 149. — Objects in plain view; inadvertent discovery.
- 150. Return; inventory.

IV. STANDING TO OBJECT.

Includes all searches, whatever the nature or purpose of the activity, but excludes standing to object to the admission of evidence in criminal cases, see CRIMINAL LAW §392.41 and review of electronic surveillance, see TELECOMMUNICATIONS §1479, 1486.

- 161. In general.
- 162. Privacy interest or expectation, in general.
- 163. Possession crimes; automatic standing.
- 164. Particular concrete applications.
- 165. Automobile searches.

349. SEARCHES AND SEIZURES

V. WAIVER AND CONSENT.

Includes all searches, excepting electronic surveillance, see TELECOMMUNICATIONS §1440, 1486, school searches, see EDUCATION §742-745, and searches of probationers, see SENTENCING AND PUNISHMENT §1990-1996, and parolees, see PARDON AND PAROLE §68, but excludes waiver by plea of guilty, see CRIMINAL LAW §273.4(2), and waiver or consent as affecting the admissibility of evidence in criminal cases, see CRIMINAL LAW §392.42.

- 171. In general.
- 172. Words or conduct expressing consent; acquiescence.
- 173. Persons giving consent.
- 173.1. — In general.
- 174. — Owners of property; hosts and guests.
- 175. — Landlords and tenants.
- 176. — Hotels and motels.
- 177. — Joint occupants.
- 178. — Family members.
- 179. Validity of consent.
- 179.1. — In general.
- 180. — Voluntary nature in general.
- 181. — Particular concrete applications.
- 182. — Prior official misconduct; misrepresentation, trick, or deceit.
- 183. — Knowledge of rights; warnings and advice.
- 184. — Custody, restraint, or detention issues.
- 185. Implied consent; airport, boarding, or entry searches.
Includes consent implied in law, as from status, but excludes consent implied in fact, as from words or conduct, see §172, above.
- 186. Scope and duration of consent; withdrawal.

VI. JUDICIAL REVIEW OR DETERMINATION.

Includes all searches, but excludes proceedings on motions to suppress evidence in criminal cases, see CRIMINAL LAW §392.40 to 392.63.

- 191. In general; conclusiveness of warrant in general.
- 192. Presumptions and burden of proof.
- 192.1. — In general.
- 193. — Search under warrant.
- 194. — Consent, and validity thereof.
- 195. Weight and sufficiency of evidence.
- 195.1. — In general.
- 196. — Warrants, issuance and execution.
- 197. — Consent in general.
- 198. — Validity of consent.

VI. JUDICIAL REVIEW OR DETERMINATION.(Cont'd)

- 199. Hearing; in camera inspection.
- 200. Scope of inquiry or review, in general.
- 201. Questions of law or fact.
- 202. Determination and relief.

349A. SECURED TRANSACTIONS

SUBJECTS INCLUDED

Transactions intended to create a security interest in personal property in general and in particular those transactions within the scope of Article 9 of the Uniform Commercial Code

Sale of accounts, contract rights, and chattel paper

Nature, requisites, validity, construction, operation and effect of secured transactions

Form and requisites of security agreements and execution and delivery thereof

Perfection of security interests

Rights, duties and liabilities of secured parties and debtors as between themselves and as to others; priorities

Assignments of rights of secured parties

Default and enforcement; redemption

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Accessions, see ACCESSION

Commingleing of goods, see CONFUSION OF GOODS

Fixtures, rights and liabilities relating to, see FIXTURES

Fraudulent transactions, including transactions fraudulent as to creditors or subsequent purchasers, see FRAUDULENT CONVEYANCES

Non-Code transactions—particular secured transactions in jurisdictions not governed by the Uniform Commercial Code or entered into prior to the effective date of the Code, see ASSIGNMENTS, BAILMENT, CHATTEL MORTGAGES, PLEDGES, SALES

349A. SECURED TRANSACTIONS

Particular kinds of personal property, secured transactions relating to and governed by laws specially applicable thereto—

Insurance policies, assignments of, see INSURANCE

Railroad equipment, mortgages of, see RAILROADS

Vessels, mortgages of, see SHIPPING

Statutory liens generally, see AUTOMOBILES, BAILMENT, INTERNAL REVENUE, TAXATION, and other specific topics

I. NATURE, REQUISITES, AND VALIDITY, ¶1-80.

(A) NATURE AND ESSENTIALS, ¶1-40.

(B) SECURITY AGREEMENTS, ¶41-60.

(C) VALIDITY, ¶61-80.

II. PERFECTION OF SECURITY INTEREST, ¶81-110.

III. CONSTRUCTION AND OPERATION, ¶111-160.

(A) IN GENERAL, ¶111-130.

(B) RIGHTS AS TO THIRD PARTIES AND PRIORITIES, ¶131-160.

IV. RIGHTS AND LIABILITIES OF PARTIES, ¶161-180.

V. ASSIGNMENTS OF SECURITY INTERESTS AND ASSIGNMENTS CREATING SECURITY INTERESTS, ¶181-200.

VI. DISCHARGE AND SATISFACTION, ¶201-220.

VII. DEFAULT AND ENFORCEMENT, ¶221-243.

I. NATURE, REQUISITES, AND VALIDITY.

(A) NATURE AND ESSENTIALS.

1. Nature and essentials of secured transactions in general.
2. Security interest.
3. What law governs.
 - 3.1. — In general.
4. — Accounts or contract rights, security interests in.
5. — General intangibles or goods normally used in more than one jurisdiction.
6. — Incoming goods already subject to a security interest.
7. — Certificate of title, property covered by.

I. NATURE, REQUISITES, AND VALIDITY.(Cont'd)

8. Statutory provisions.
 - 8.1. — In general.
9. — Retroactive operation.
10. Other transactions distinguished.
11. Property and rights subject to security interest.
 - 11.1. — In general.
12. — Title or interest of debtor.
13. — After-acquired property.
14. Classification of goods.
 - 14.1. — In general.
15. — Consumer goods.
16. — Equipment.
17. — Farm products.
18. — Inventory.
19. Debts or obligations which may be secured.
 - 19.1. — In general.
20. — Future advances.
21. Parties.
22. Consideration.
23. Equitable secured transactions.
24. Absolute transfer as security.
25. Evidence as to character of transaction or instrument.
26. Questions for jury.

(B) SECURITY AGREEMENTS.

41. Necessity and sufficiency of writing in general.
42. Designation of parties.
43. Description of collateral.
 - 43.1. — In general.
44. — Errors or variations in description.
45. Description of land concerned.
46. Description of debts or liabilities secured.
47. Execution in general.
48. Signature.
49. Delivery and acceptance.
50. Evidence.
51. Questions for jury.

(C) VALIDITY.

61. Capacity and assent of parties in general.
62. Mistake.
63. Fraud, duress, or undue influence.
64. Illegality.

349A. SECURED TRANSACTIONS

I. NATURE, REQUISITES, AND VALIDITY.(Cont'd)

- 65. Estoppel, waiver, and ratification.
- 66. Evidence.
- 67. Questions for jury.

II. PERFECTION OF SECURITY INTEREST.

- 81. In general.
- 82. Necessity of filing.
- 82.1. — In general.
- 83. — Consumer goods and farm equipment, purchase money security interests.
- 84. — Accounts or contract rights, security interests in.
- 85. — Fixtures.
- 86. — Motor vehicles.
- 87. Notation on certificate of title.
- 88. Instruments, documents, and goods covered by documents, perfection of security interest.
- 89. Possession by secured party without filing.
- 90. Place of filing.
- 91. Time of filing.
- 92. Financing statement.
- 92.1. — In general.
- 93. — Addresses.
- 94. — Description of collateral.
- 95. — Signatures.
- 96. What constitutes filing.
- 97. Operation and effect of filing.
- 98. Duration of filing; continuation statement.
- 99. Removal of debtor or collateral.
- 100. Termination statement.
- 101. Evidence.
- 102. Questions for jury.

III. CONSTRUCTION AND OPERATION.

(A) IN GENERAL.

- 111. Application of general rules of construction.
- 112. Parties secured.
- 113. Debts or liabilities secured.
- 113.1. — In general.
- 114. — Future advances.
- 115. Property included.
- 115.1. — In general.
- 116. — After-acquired property.

III. CONSTRUCTION AND OPERATION.(Cont'd)

- 117. Title and interests in collateral.
 - 118. Evidence.
 - 119. Questions for jury.
- ##### (B) RIGHTS AS TO THIRD PARTIES AND PRIORITIES.
- 131. Effect as to third persons in general.
 - 132. Effect of liberty to use or dispose of collateral without accounting.
 - 133. When security interest attaches.
 - 134. When security interest is perfected.
 - 135. Continuity of perfection.
 - 136. Foreign security interests.
 - 136.1. — In general.
 - 137. — Interests perfected in foreign jurisdiction.
 - 138. Priorities in general.
 - 139. Unperfected security interests, priority over.
 - 139.1. — In general.
 - 140. — Lien creditors.
 - 141. Buyers of goods, protection against perfected security interests.
 - 142. Purchasers of chattel paper and nonnegotiable instruments.
 - 143. Purchasers of negotiable instruments, documents of title, or securities.
 - 144. Priority of liens arising by operation of law.
 - 145. Conflicting security interests, priorities among.
 - 145.1. — In general.
 - 146. — Purchase money security interests.
 - 147. Agreements affecting priority.
 - 148. Actions to determine and establish rights.
 - 148.1. — In general.
 - 149. — Evidence.
 - 150. — Questions for jury.

IV. RIGHTS AND LIABILITIES OF PARTIES.

- 161. In general.
- 162. Statement of account or list of collateral.
- 163. Possession or control of collateral.
- 164. Use and disposition of collateral or proceeds.
- 164.1. — In general.

349B. SECURITIES REGULATION

IV. RIGHTS AND LIABILITIES OF PARTIES.(Cont'd)

- 165. — Care of collateral and negligence of secured party.
- 166. — Alienability of rights of debtor.
- 167. — Judicial process.
- 168. — Secured party's rights in proceeds.
- 168.5. — Criminal liability of debtor.
- 169. Obligation of secured party on contract of debtor.
- 170. Conversion or injury to collateral.
- 171. Actions.

V. ASSIGNMENTS OF SECURITY INTERESTS AND ASSIGNMENTS CREATING SECURITY INTERESTS.

- 181. Requisites and validity in general.
- 182. Filing assignment.
- 183. Operation and effect.
- 184. Rights and liabilities of parties.
- 185. Equities and defenses against assignee.
- 185.1. — In general.
- 186. — Agreement not to assert defenses.
- 187. Modification of contract after notification of assignment.
- 188. Payment by debtor after assignment.
- 189. Actions by or against assignees.
- 190. Evidence.
- 191. Questions for jury.

VI. DISCHARGE AND SATISFACTION.

- 201. Payment of debt.
- 202. Tender.
- 203. Disposition of collateral.
- 204. Giving new security.
- 205. Release of collateral.
- 206. Filing release.
- 207. Effect of release or satisfaction.

VII. DEFAULT AND ENFORCEMENT.

- 221. Rights and remedies of secured party in general.
- 222. Default of debtor.
- 223. Election of remedies.
- 224. Waiver, estoppel, and abandonment of rights.
- 225. Restraining enforcement.
- 226. Actions on debt or liability secured.
- 227. Collection rights of secured party.
- 228. Possession by secured party.

VII. DEFAULT AND ENFORCEMENT.(Cont'd)

- 229. Disposition of collateral.
- 229.1. — In general.
- 230. — Notice.
- 231. — Manner of disposition in general.
- 232. — Public or private sale.
- 233. — Purchase by secured party.
- 234. — Effect of disposition.
- 235. — Title and rights of purchaser.
- 236. — Setting aside.
- 237. — Application of proceeds.
- 238. — Compulsory disposition.
- 239. Acceptance of collateral as discharge of obligation.
- 240. Deficiency and personal liability.
- 241. Redemption of collateral.
- 242. Wrongful enforcement.
- 242.1. — In general.
- 243. — Damages and amount of recovery.

349B. SECURITIES REGULATION

SUBJECTS INCLUDED

Federal and state regulations of the distribution of investment securities, of trading in and markets for such securities, and of investment companies and advisers

Securities commissions and officers and administrative powers and proceedings

Civil effects of violation of securities regulations and rights, liabilities, and remedies arising therefrom

Criminal offenses and prosecutions relating to violations of such regulations

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Brokers' rights and obligations generally and as members of exchanges, see **BROKERS, EXCHANGES**

Corporate securities generally, subscription, issuance, and transfer, and security holders' rights and liabilities, see **CORPORATIONS AND BUSINESS ORGANIZATIONS**

349B. SECURITIES REGULATION

Public utility holding company regulation, see PUBLIC UTILITIES

Arbitration of disputes between stock exchange members and their customers, employees or fellow members, see ALTERNATIVE DISPUTE RESOLUTION

Liability for violation of stock exchange rules or for failure to enforce such rules, see EXCHANGES

I. FEDERAL REGULATION, ¶1-240.

(A) IN GENERAL, ¶1-10.

(B) REGISTRATION AND DISTRIBUTION, ¶11.10-34.

1. REGISTRATION REQUIREMENT IN GENERAL, ¶11.10-13.

2. EXEMPT SECURITIES, ¶14.10-17.

3. EXEMPT TRANSACTIONS, ¶18.10-24.

4. REGISTRATION STATEMENTS, ¶25.10-25.49.

5. PROSPECTUSES AND COMMUNICATIONS, ¶25.50-26.

6. FRAUDULENT TRANSACTIONS, ¶27.10-28.

7. TRUST INDENTURES, ¶29.10-29.14.

8. FOREIGN TRANSACTIONS OR SECURITIES, ¶30.10-34.

(C) TRADING AND MARKETS, ¶35.10-80.

1. IN GENERAL, ¶35.10-39.

2. REGISTRATION AND REGULATION OF EXCHANGES, EXCHANGE MEMBERS, BROKERS, DEALERS AND DEALERS' ASSOCIATIONS, ¶40.10-44.

3. MARGIN OR CREDIT, ¶45.10-48.

4. PROXIES, ¶49.10-51.

5. TAKE-OVER REGULATION, ¶52.10-52.26.

5-A. TENDER OFFERS, ¶52.30-52.50.

6. INSIDER REPORTING AND SHORT-TERM TRADING, ¶53.10-59.

7. FRAUD AND MANIPULATION, ¶60.10-66.

8. FOREIGN TRANSACTIONS OR SECURITIES, ¶67.10-80.

(D) SECURITIES AND EXCHANGE COMMISSION AND PROCEEDINGS, ¶81-130.

(E) REMEDIES, ¶131-185.

1. IN GENERAL, ¶131-170.

I. FEDERAL REGULATION—Cont'd

(E) REMEDIES—Cont'd

2. INJUNCTION, ¶171-181.

3. RECEIVERSHIP, ¶182-185.

(F) LIQUIDATION OF BROKER-DEALERS; SECURITIES INVESTOR PROTECTION CORPORATION, ¶185.10-190.

(G) OFFENSES AND PROSECUTIONS, ¶191-210.

(H) INVESTMENT COMPANIES, ¶211-222.

(I) INVESTMENT ADVISERS, ¶223-240.

II. STATE REGULATION, ¶241-329.

(A) IN GENERAL, ¶241-290.

(B) CIVIL EFFECTS OF VIOLATIONS, ¶291-320.

(C) OFFENSES AND PROSECUTIONS, ¶321-329.

I. FEDERAL REGULATION.

(A) IN GENERAL.

1. Nature and power to regulate.

2. Constitutional and statutory provisions.

2.1. — In general.

2.10. — Validity.

2.20. — Purpose.

2.30. — Construction and operation in general.

3. Administrative rules and regulations.

5. Securities, what are.

5.10. — In general; investment contracts.

5.11. — Particular interests.

5.12. — Evidence of indebtedness generally.

5.13. — Bills and notes; commercial paper, mortgages and bonds.

5.14. — Loan participation agreements.

5.15. — Bank accounts.

5.16. — Certificates of deposit.

5.17. — Brokerage accounts.

5.18. — Contracts for sale of goods.

5.19. — Real estate contracts; condominium interests.

5.20. — Commodity futures contracts; forward contracts.

5.21. — Employment contracts.

5.22. — Retirement or pension plan interests.

5.23. — Franchise contracts.

349B. SECURITIES REGULATION

I. FEDERAL REGULATION.(Cont'd)

- 5.24. — Distributorships; pyramid schemes.
- 5.25. — Corporate shares or stock.
 - (1). In general.
 - (2). Transfer of controlling interest; sale or acquisition of business.
 - (3). Stock warrants, options and subscription or other rights.
 - (4). Cooperative shares or rights.
- 5.26. — Partnership or joint venture interests.
- 5.27. — Mineral rights or interests.
- 5.28. — Trusts.
- 5.29. — Government obligations.
- 5.30. — Insurance policies and annuities.
- 5.31. — Warehouse receipts.
- 5.32. — Profits, interest or participation in.
- 5.33. — Guaranties.
- 5.40. Pleading.
- 5.45. Evidence.
- 5.50. Questions of law or fact; jury questions.

(B) REGISTRATION AND DISTRIBUTION.

1. REGISTRATION REQUIREMENT IN GENERAL.

- 11.10. In general.
- 11.11. Offer and sale; delivery.
- 11.12. Mergers and acquisitions.
- 11.13. Use of mails or instrumentalities of commerce.
- 11.14. Persons subject to regulation or liability.
- 11.15. — In general.
- 11.16. — Aiders and abettors.
- 11.17. — Issuers.
- 11.18. — Underwriters or distributors.
- 11.19. — Control persons or groups and underwriters dealing with them.
- 11.20. — Brokers, dealers and their employees.
- 11.21. — Accountants, attorneys and other professionals.
- 11.22. Existence of private cause of action.
- 11.23. Persons entitled to sue or recover.
- 11.24. Purchasers or offerees.
- 11.25. Persons in pari delicto.
- 11.26. Grounds of or defenses to liability.

Includes grounds and defenses only if violation of regulation has been established; Excludes whether regulation has in fact been violated, see preceding lines.

I. FEDERAL REGULATION.(Cont'd)

- 11.27. — Scienter; absolute or strict liability.
- 11.28. — Good faith; advice of counsel.
- 11.29. — Cause of injury or loss.
- 11.30. — Estoppel or waiver.
- 11.31. — Other grounds or defenses.
- 11.40. Pleading.
- 11.45. Evidence.
- 11.50. Questions of law or fact; jury questions.

2. EXEMPT SECURITIES.

- 14.10. In general.
- 14.11. Banks, securities of.
- 14.12. Government obligations.
- 14.13. Short-term instruments.
- 14.14. Charitable organizations, securities of.
- 14.15. Savings and loans, cooperatives or similar organizations, securities of.
- 14.16. Carriers, securities of.
- 14.17. Certificates of receivers, trustees or debtors in possession.
- 14.18. Insurance policies and annuities.
- 14.19. Securities exchanged with existing holders.
- 14.20. Intra-state offerings.
- 14.21. Small entities, securities of.
- 14.30. Pleading.
- 14.35. Evidence.
- 14.40. Questions of law or fact; jury questions.

3. EXEMPT TRANSACTIONS.

- 18.10. In general.
- 18.11. Nonpublic or private offerings.
- 18.12. Number of offerees or purchasers.
- 18.13. Offerees' knowledge or sophistication; access to or need for information.
- 18.14. Multiple offerings; integration.
- 18.15. Redistribution by offerees.
- 18.16. Dealers' transactions.
- 18.17. Brokers' transactions executed on exchanges.
- 18.18. Small offerings.
- 18.20. Pleading.
- 18.25. Evidence.
- 18.30. Questions of law or fact; jury questions.

349B. SECURITIES REGULATION

4. REGISTRATION STATEMENTS.

- 25.10. In general.
- 25.11. Effective date.
- 25.12. Fees.
- 25.13. Requisites in general.
- 25.14. Statement or certification by accountant, attorney or other professional.
- 25.15. Withdrawal or amendment.
- 25.16. Suspension of registration; stop orders.
- 25.17. False statements or omissions; accuracy.
- 25.18. — In general.
- 25.19. — Persons entitled to sue or recover.
- 25.20. — Persons liable.
 - (1). In general.
 - (2). Aiders and abettors.
 - (3). Accountants, attorneys or other professionals.
- 25.21. — Grounds of and defenses to liability.

Includes grounds and defenses only if violation of regulation has been established; Excludes whether regulation has in fact been violated, see preceding lines.

 - (1). In general.
 - (2). Scienter, absolute or strict liability.
 - (3). Materiality; reliance.
 - (4). Good faith; due diligence or reasonable investigation.
 - (5). Cause of injury.
 - (6). Estoppel and waiver.
- 25.22. Operation and effect.
- 25.25. Pleading.
- 25.30. Evidence.
- 25.35. Questions of law or fact; jury questions.

5. PROSPECTUSES AND COMMUNICATIONS.

- 25.50. In general.
- 25.51. Prospectus, what is.
- 25.52. Requisites in general.
- 25.53. Delivery.
- 25.54. Withdrawal or amendment.
- 25.55. False statements or omissions; accuracy.
- 25.56. — In general.
- 25.57. — Particular prospectuses or communications.
- 25.58. — Fiscal or accounting data.

I. FEDERAL REGULATION.(Cont'd)

- 25.59. — Earnings projections.
- 25.60. — Persons entitled to sue or recover.
- 25.61. — Persons liable.
 - (1). In general.
 - (2). Sellers.
 - (3). Aiders and abettors.
 - (4). Controlling persons.
 - (5). Issuers.
 - (6). Underwriters.
 - (7). Brokers and dealers.
 - (8). Directors and officers.
 - (9). Accountants, attorneys and other professionals.
- 25.62. — Grounds of and defenses to liability.

Includes grounds and defenses only if violation of regulation has been established; Excludes whether regulation has in fact been violated, see preceding lines.

 - (1). In general.
 - (2). Scienter; fault or due diligence.
 - (3). Reliance.
 - (4). Materiality.
- 25.65. Pleading.

Excludes requirement of particularity, see FEDERAL CIVIL PROCEDURE §636.
- 25.70. Evidence.
- 25.75. Questions of law or fact; jury questions.

6. FRAUDULENT TRANSACTIONS.

- 27.10. In general.
- 27.11. Transactions subject to regulation or protection.
- 27.12. — In general.
- 27.13. — Use of mails or instrumentalities of commerce.
- 27.14. — Offer and sale in general.
- 27.15. — Exempt transactions.
- 27.16. — Receipt of money or property.
- 27.17. — Mergers and acquisitions.
- 27.18. Fraudulent statements, omissions or conduct.
- 27.19. — In general.
- 27.20. — Omission or nondisclosure in general.
- 27.21. — Brokers, dealers or salesmen, conduct of.
- 27.22. — Accountants, attorneys or other professionals, conduct of.

349B. SECURITIES REGULATION

I. FEDERAL REGULATION.(Cont'd)

- 27.23. — Fiscal or accounting data.
- 27.24. — Opinions, predictions, forecasts and recommendations.
- 27.25. — Post-registration developments.
- 27.26. — Price manipulation; fraud on the market.
- 27.27. Existence of private cause of action.
- 27.28. Persons entitled to sue or recover.
- 27.29. — In general.
- 27.30. — Buyers and sellers.
- 27.31. — Privity.
- 27.32. — Persons in pari delicto.
- 27.33. Persons liable.
- 27.34. — In general.
- 27.35. — Sellers and offerors.
- 27.36. — Aiders and abettors.
- 27.37. Grounds of and defenses to liability.
Includes grounds and defenses only if violation of regulation has been established; Excludes whether regulation has in fact been violated, see preceding lines.
- 27.38. — In general.
- 27.39. — Scierter; knowledge or intention.
- 27.40. — Good faith; belief in success; advice of counsel.
- 27.41. — Reliance.
- 27.42. — Materiality and causation.
- 27.45. Pleading.
Excludes requirement of particularity, see FEDERAL CIVIL PROCEDURE ¶636.
- 27.50. Evidence.
- 27.55. Questions of law or fact; jury questions.

7. TRUST INDENTURES.

- 29.10. In general.
- 29.11. Securities subject to regulation; exemptions.
- 29.12. Indentures.
- 29.13. Trustees.
- 29.14. Proceedings.

8. FOREIGN TRANSACTIONS OR SECURITIES.

- 30.10. In general.
- 30.11. Transactions with foreigners or in foreign countries.
- 30.12. Foreign securities.
- 30.13. Pleading.
- 30.14. Evidence.

I. FEDERAL REGULATION.(Cont'd)

- 30.15. Questions of law or fact; jury questions.

(C) TRADING AND MARKETS.

1. IN GENERAL.

- 35.10. In general.
- 35.11. Transactions regulated in general.
- 35.12. Purchase or sale.
- 35.13. Transactions other than on exchange.
- 35.14. Persons regulated or liable in general.
Includes generalities only; see also similar lines in more specific following sections.
- 35.15. Controlling persons.
- 35.16. Aiders and abettors.
- 35.17. Existence of private cause of action.
- 35.18. Persons entitled to sue or recover.
- 35.19. Persons in pari delicto.
- 35.20. Grounds of and defenses to liability.
Includes grounds and defenses only if violation of regulation has in fact been violated, see preceding lines.
- 35.21. Estoppel and waiver.
- 35.22. Registration and listing of securities.
- 35.23. Periodic reporting; accounting and reports.
Excludes reports of particular transactions, see ¶49.15, 52.15-52.26 and 53.11, and reports required of brokers and certain other persons, see ¶40.16.
- 35.24. Contracts in violation of regulations.
- 35.25. Pleading.
- 35.26. Evidence.
- 35.27. Questions of law or fact; jury questions.

2. REGISTRATION AND REGULATION OF EXCHANGES, EXCHANGE MEMBERS, BROKERS, DEALERS AND DEALERS' ASSOCIATIONS.

Excludes liability for misconduct, see e.g., ¶11.20, 25.20(3), 25.61(7), 27.21 and 60.32(1-3).

- 40.10. In general.
- 40.11. Exchange registration and regulation.
- 40.12. Broker-dealers and associates, registration and regulation.
- 40.13. Net capital requirement.
- 40.14. Revocation, suspension, or other discipline.
 - (1). In general.
 - (2). Proceedings and review.
- 40.15. Dealers' associations.
- 40.16. Accounting and reporting requirements.

349B. SECURITIES REGULATION

3. MARGIN OR CREDIT.

- 45.10. In general.
- 45.11. Extension of credit by brokers and dealers.
- 45.12. — In general.
- 45.13. — Cash account transactions.
 - (1). In general.
 - (2). Time for payment; liquidation.
 - (3). Delivery of securities.
- 45.14. — Margin account transactions.
 - (1). In general.
 - (2). Margin calls and collateral; liquidation.
- 45.15. — Transactions involving other special accounts.
- 45.16. — Disclosure requirements.
- 45.17. — Short sales.
- 45.18. — Loan of securities.
- 45.19. — Arranging credit.
- 45.20. — Existence of cause of action for violation of regulations.
- 45.21. — Persons entitled to sue or recover.
- 45.22. — Persons in pari delicto.
- 45.23. — Grounds of and defenses to liability.
Includes grounds and defenses only if violation of regulation has been established; Excludes whether regulation has in fact been violated, see preceding lines.
- 45.24. — Customers' liabilities.
- 45.25. Transactions between dealers; specialist transactions.
- 45.26. Extension of credit by persons other than broker-dealers; banks.
- 45.27. New issues.
- 45.28. Pleading.
- 45.29. Evidence.
- 45.30. Questions of law or fact; jury questions.

4. PROXIES.

- 49.10. In general.
- 49.11. Solicitations subject to regulation.
- 49.12. Exemptions.
- 49.13. Requisites in general.
- 49.14. Annual reports.
- 49.15. Reporting requirements; participants required to file.
- 49.16. Contested solicitations; furnishing lists of holders or mailing proxies.
- 49.17. Proposals of security holders.

I. FEDERAL REGULATION.(Cont'd)

- 49.18. Voting proxies; conduct of elections.
- 49.19. False or fraudulent proxies; accuracy and completeness.
- 49.20. — In general.
- 49.21. — False or misleading statements; misrepresentation.
- 49.22. — Items to be disclosed; nondisclosure.
 - (1). In general.
 - (2). Materiality of omissions.
 - (3). Particular matters.
 - (4). Mergers, acquisitions or sales of assets.
 - (5). Stock purchases or repurchases.
 - (6). Fiscal or accounting data; valuation.
 - (7). Claims against corporation or others.
 - (8). Misconduct.
 - (9). Transactions between corporation and insiders or contestants.
 - (10). Estimates, projections or speculation.
- 49.23. — Existence of private cause of action.
- 49.24. — Persons entitled to sue or recover.
- 49.25. — Persons liable.
 - (1). In general.
 - (2). Aiders and abettors.
 - (3). Directors or persons named in proxies.
- 49.26. — Grounds of and defenses to liability.
Includes grounds and defenses only if violation of regulation has been established; Excludes whether regulation has in fact been violated, see preceding lines.
 - (1). In general.
 - (2). Scienter, knowledge or negligence; good faith.
 - (3). Materiality of violation; reliance and causation.
- 49.27. Effect of violation.
- 49.28. Pleading.
- 49.29. Evidence.
- 49.30. Questions of law or fact; jury questions.

5. TAKE-OVER REGULATION.

- 52.10. In general.

349B. SECURITIES REGULATION

I. FEDERAL REGULATION.(Cont'd)

- 52.15. Reporting and filing requirements in general.
- 52.16. Persons or groups required to file.
- 52.17. Time.
- 52.18. Sufficiency; items to be disclosed.
- 52.19. Cure of misstatements or omissions; amendment.
- 52.20. Existence of private cause of action.
- 52.21. Persons entitled to sue or recover.
- 52.22. Persons liable.
- 52.23. Grounds of and defenses to liability.
Includes grounds and defenses only if violation of regulation has been established; Excludes whether regulation has in fact been violated, see preceding lines.
- 52.24. Pleading.
- 52.25. Evidence.
- 52.26. Questions of law or fact; jury questions.

5-A. TENDER OFFERS.

- 52.30. In general.
- 52.31. Transactions subject to regulation; "tender offer" defined.
- 52.32. Requisites in general.
- 52.33. Announcement of offer.
- 52.34. Tender and acceptance of offer.
- 52.35. Partial offers; proration.
- 52.36. Time.
- 52.37. Fraudulent, manipulative or deceptive conduct.
- 52.38. — In general.
- 52.39. — Conduct of offeror.
 - (1). In general.
 - (2). Disclosures and omissions in general.
 - (3). Materiality.
 - (4). Particular matters.
 - (5). Plans or intent.
 - (6). Financial information; valuation.
 - (7). Statements prior to tender offer.
 - (8). Statements subsequent to tender offer.
 - (9). Cure of misstatements or omissions; amendment.
 - (10). Clarity of disclosure.
- 52.40. — Conduct of target corporation or its officers, directors or shareholders.
 - (1). In general.

I. FEDERAL REGULATION.(Cont'd)

- (2). Disclosures and omissions.
- 52.41. Existence of private cause of action.
- 52.42. Persons entitled to sue or recover.
- 52.43. Persons liable.
- 52.44. Grounds of and defenses to liability.
Includes grounds and defenses only if violation of regulation has been established; Excludes whether regulation has in fact been violated, see preceding lines.
- 52.45. — In general.
- 52.46. — Scier; knowledge, intent or negligence.
- 52.47. — Reliance and causation.
- 52.48. Pleading.
- 52.49. Evidence.
- 52.50. Questions of law or fact; jury questions.

6. INSIDER REPORTING AND SHORT-TERM TRADING.

- 53.10. In general.
- 53.11. Reporting requirements.
- 53.12. Insider trading.
Excludes fraud or deceptive conduct by insiders, see §60.10 et seq.
- 53.13. — In general.
- 53.14. — Securities affected.
- 53.15. — Insiders subject to regulation.
- 53.16. — Transactions subject to regulation.
 - (1). In general.
 - (2). Purchase and sale, existence and time of.
 - (3). Different classes of securities.
 - (4). Potential for abuse; realization of profit.
 - (5). Intent; use of or access to inside information.
 - (6). Involuntary sales or exchanges; rescission of voidable transactions.
 - (7). Sale or exchange pursuant or subsequent to merger or tender offer.
 - (8). Short sales.
 - (9). Gifts.
 - (10). Conversion or reclassification.
 - (11). Options, warrants and incentive plans.
- 53.17. — Exempt transactions.
 - (1). In general.

349B. SECURITIES REGULATION

I. FEDERAL REGULATION.(Cont'd)

- (2). Debts previously contracted.
- (3). Dealers' transactions.
- (4). Arbitrage transactions.

53.18. Persons entitled to sue or recover.

53.19. Estoppel and waiver.

53.20. Pleading.

53.21. Evidence.

53.22. Questions of law or fact; jury questions.

7. FRAUD AND MANIPULATION.

60.10. In general.

60.11. Transactions subject to regulation.

60.12. — In general.

60.13. — Transactions not on exchanges or organized markets.

60.14. — Exempt transactions.

60.15. — Connection with purchase or sale.

Excludes whether individual is a purchaser or seller, see §60.37.

60.16. — Use of mails or instrumentalities of commerce.

60.17. Manipulative, deceptive or fraudulent conduct.

60.18. — In general.

60.19. — Particular conduct.

60.20. — Mismanagement or breach of fiduciary duty.

60.21. — Elimination of minority shareholders; "freeze outs".

60.22. — Mergers, reorganizations or tender offers.

60.23. — "Going private" transactions.

60.24. — Partnership transactions.

60.25. — Fraud on the market; price manipulation.

60.26. — Purchase of securities during a distribution.

60.27. — Misrepresentation.

(1). In general.

(2). Prospectuses and proxies.

(3). Mergers and acquisitions.

(4). Facts or opinions.

(5). Forecasts, estimates, predictions or projections.

(6). Financial or periodic reports; accounting data and valuations.

I. FEDERAL REGULATION.(Cont'd)

(7). Statements in the media, press releases and financial reporting services.

60.28. — Nondisclosure; insider trading.

(1). In general.

(2). Duty to disclose or refrain from trading.

(2.1). — In general.

(3). — Buyers or sellers.

(4). — Corporate officers or directors; insiders.

(5). — Tippees.

(6). — Exchanges.

(7). — Lenders.

(8). Persons entitled to disclosure; public disclosure.

(9). Mode or time of disclosure.

(10). Matters to be disclosed.

(10.1). — In general.

(11). — Materiality.

(12). — Inside or nonpublic market information.

(13). — Particular matters.

(14). — Prospectuses and proxies.

(15). — Mergers, acquisitions, reorganizations or tender offers.

(16). — Correction or confirmation of prior statements or rumors.

60.29. — Release of inside or nonpublic market information; tipping.

60.30. — Conduct of accountants, attorneys or other professionals.

60.31. — Conduct of underwriters.

60.32. — Conduct of broker-dealers.

(1). In general.

(2). Nondisclosure or misrepresentation.

(3). Unauthorized or excessive trading; churning.

60.33. — Misleading statements in filed documents.

60.34. Existence of private cause of action.

60.35. Persons entitled to sue or recover.

60.36. — In general; privity.

60.37. — Buyers or sellers.

Excludes whether transaction is in connection with purchase or sale, see §60.15.

60.38. — Persons in pari delicto.

60.39. Persons liable.

349B. SECURITIES REGULATION

I. FEDERAL REGULATION.(Cont'd)

- 60.40. — In general; control persons.
- 60.41. — Aiders and abettors.
Excludes accountants and attorneys, see ¶60.30, underwriters, see ¶60.31 and broker-dealers, see ¶60.32.
- 60.42. — Employers; respondeat superior.
- 60.43. Grounds of and defenses to liability.
Includes grounds and defenses only if violation of regulation has been established; Excludes whether regulation has in fact been violated, see preceding lines.
- 60.44. — In general.
- 60.45. — Scienter, intent, knowledge, negligence or recklessness.
(1). In general.
(2). Aiders and abettors.
(3). Accountants, attorneys, underwriters and brokers.
- 60.46. — Materiality of violation.
Excludes duty to disclose, see ¶60.28(11).
- 60.47. — Causation; existence of injury.
- 60.48. — Reliance.
(1). In general.
(2). Nondisclosure.
(3). Fraud on the market.
- 60.49. — Estoppel and waiver.
- 60.50. Pleading.
Includes heightened pleading standard for scienter under Private Securities Litigation Act; requirement of particularity in general, see FEDERAL CIVIL PROCEDURE ¶636.
- 60.51. — In general.
(1). In general.
(2). Scienter.
- 60.52. — Connection with purchase and sale.
- 60.53. — Misrepresentation.
- 60.54. — Nondisclosure.
- 60.55. — Conduct of broker-dealers.
- 60.56. — Conduct of accountants or attorneys.
- 60.57. — Issues, proof and variance.
- 60.60. Evidence.
- 60.61. — In general; admissibility.
- 60.62. — Presumptions and burden of proof.
- 60.63. — Weight and sufficiency.
(1). In general.
(2). Misrepresentation, nondisclosure, and insider trading.
(3). Conduct of broker-dealers.
(4). Conduct of accountants and attorneys.

I. FEDERAL REGULATION.(Cont'd)

- 60.70. Questions of law or fact; jury questions.
- 8. FOREIGN TRANSACTIONS OR SECURITIES.**
- 67.10. In general.
- 67.11. Transactions with foreigners or in foreign countries.
- 67.12. Foreign securities.
- 67.13. Pleading.
- 67.14. Evidence.
- 67.15. Questions of law or fact; jury questions.

(D) SECURITIES AND EXCHANGE COMMISSION AND PROCEEDINGS.

81. Securities and Exchange Commission in general.
82. Powers and functions in general; sanctions.
83. Jurisdiction of courts in advance of administrative action.
84. Proceedings in general.
85. Investigations.
86. Compelling testimony or production of evidence.
87. Evidence.
88. Judicial review and enforcement of decisions.
89. Scope of review.

(E) REMEDIES.

1. IN GENERAL.

131. In general; nature and form of remedy.
132. Conditions precedent.
133. Jurisdiction and venue.
Personal jurisdiction, see COURTS I(A) and FEDERAL COURTS X.
134. Time to sue and limitations.
Whether state or federal law applies, see FEDERAL COURTS ¶3034. Computation of limitations period, see LIMITATION OF ACTIONS, particularly ¶100 for computation as affected by discovery of fraud and ¶104 for computation as affected by concealment of cause of action.
135. Parties and process.
136. Pleading.
142. Evidence in general.
143. Presumptions and burden of proof.
144. Weight and sufficiency of evidence.
147. Questions for jury.
148. Instructions.

349B. SECURITIES REGULATION

I. FEDERAL REGULATION.(Cont'd)

- 149. Relief granted in general.
- 150. Insiders' profits, recovery of.
- 150.1. — In general.
- 151. — Cost basis.
- 152. — Maximizing profits; matching transactions.
- 153. — Interest.
- 154. Damages.
- 154.1. — In general.
- 155. — Actual or punitive damages.
- 156. Restitution or rescission; interest.
- 157. Costs and expenses; attorney fees.
- 157.1. — In general.
- 158. — Security for costs.

2. INJUNCTION.

- 171. Nature and grounds of injunction in general.
- 172. Registration and distribution regulation violations.
- 173. Proxy or take-over regulation violations.
- 174. Proceedings in general.
- 175. Evidence.
- 175.1. — In general.
- 176. — Presumptions and burden of proof.
- 177. — Weight and sufficiency.
- 178. Preliminary injunction.
- 178.1. — In general.
- 179. — Affidavits and other evidence.
- 180. Permanent injunction and other relief.
- 181. Violation and enforcement.

3. RECEIVERSHIP.

- 182. In general.

(F) LIQUIDATION OF BROKER-DEALERS; SECURITIES INVESTOR PROTECTION CORPORATION.

- 185.10. In general.
- 185.11. Members of Securities Investor Protection Corporation.
- 185.12. Appointment of trustee.
- 185.13. Powers and duties of trustee.
- 185.14. — In general; collection of assets.
- 185.15. — Completion of open contractual commitments.
- 185.16. Customers' claims; who are customers.

I. FEDERAL REGULATION.(Cont'd)

- 185.17. Claims of broker-dealers and other noncustomers.
- 185.18. Requisites of claims; time for filing.
- 185.19. Distribution and allocation of assets and funds; priority.
- 185.20. Compensation for services of trustee and others.
- 185.21. Proceedings.

(G) OFFENSES AND PROSECUTIONS.

- 191. Offenses in general.
- 192. Registration and distribution regulation violations in general.
- 193. Fraudulent transactions.
- 194. Criminal prosecutions in general.
- 195. Indictment and information.
- 196. Evidence.
- 196.1. — In general.
- 197. — Presumptions and burden of proof.
- 198. — Admissibility.
- 199. — Weight and sufficiency.
- 200. Questions for jury.

(H) INVESTMENT COMPANIES.

- 211. Investment company regulation in general.
- 212. Companies regulated and exemptions.
- 213. Registration.
- 214. Directors, officers, and trustees.
- 215. Advisers', management, and underwriting contracts.
- 216. Transactions of affiliated persons and underwriters.
- 217. Administrative proceedings and review.
- 218. Civil effects of violations; rights and liabilities.
- 219. Actions.
- 219.1. — In general.
- 219.5. — Jurisdiction and venue.
Personal jurisdiction, see COURTS I(A) and FEDERAL COURTS X.
- 220. — Evidence.
- 221. Injunction and receivership.
- 222. Offenses and prosecutions.

(I) INVESTMENT ADVISERS.

- 223. In general.
- 224. Administrative proceedings; injunction.

349B. SECURITIES REGULATION

II. STATE REGULATION.

(A) IN GENERAL.

- 241. Power to regulate.
- 242. What law governs.
- 243. Statutory provisions.
- 243.1. — In general.
- 244. — Validity.
- 245. — Purpose.
- 246. — Construction and operation in general.
- 247. Registration, qualification, or license requirement in general.
- 248. Securities requiring registration or qualification in general.
- 249. Particular securities.
- 249.1. — In general.
- 250. — Bills, notes, or evidence of indebtedness.
- 251. — Certificates of interest or participation.
- 252. — Investment contracts.
- 253. — Mineral interests.
- 254. — Sale of property in general.
- 255. Classification of securities.
- 256. Persons or companies affected.
- 256.1. — In general.
- 257. — Investment companies.
- 258. — Banks and trust companies.
- 259. — Foreign companies.
- 260. — Broker-dealers, agents, and investment advisers.
- 261. — Owner selling his own securities.
- 262. Transactions covered.
- 262.1. — In general.
- 263. — Exchange of property.
- 264. — Consideration for loans.
- 265. — Joint venture or partnership transactions.
- 266. — Preincorporation subscriptions and sales to incorporators.
- 267. — Liquidation or reorganization.
- 268. — Isolated transactions.
- 269. — Private offerings; close corporations.
- 270. Officers or commissions and proceedings in general.
- 271. Appointment of process agent.
- 272. Furnishing information, statement, or notice.

II. STATE REGULATION.(Cont'd)

- 273. Bonds or other security; deposit in escrow.
- 274. Investigations.
- 275. Judicial review.
- 276. Construction and effect of registration or license; conditions.
- 277. Renewal, modification, revocation, or suspension.
- 278. Fraudulent or other prohibited practices.

(B) CIVIL EFFECTS OF VIOLATIONS.

- 291. Rights, liabilities, and remedies.
- 291.1. — In general.
- 292. — Validity and enforcement of contract or transaction in general.
- 293. — Void or voidable contracts or transactions.
- 294. — Stock subscriptions.
- 295. — Notes given for purchase price.
- 296. — Validity of securities and holders' rights and liabilities.
- 297. — Recovery for fraud.
- 298. — Recovery for services.
- 299. — Rescission and recovery of consideration.
- 300. — Persons who may assert illegality in general.
- 301. — Persons in pari delicto, estoppel, and ratification.
- 302. — Persons liable.
- 303. Actions.
- 303.1. — In general.
- 304. — Conditions precedent.
- 305. — Limitations and laches.
See also LIMITATION OF ACTIONS.
- 306. — Pleading.
- 307. — Evidence in general.
- 308. — Weight and sufficiency of evidence.
- 309. — Trial and relief.
- 310. Injunction and receivership.
- 311. Liabilities on bonds.
- 311.1. — In general.
- 312. — Actions.

(C) OFFENSES AND PROSECUTIONS.

- 321. Offenses in general.
- 322. Unauthorized issuance, sale, or offer.
- 323. Fraud or misrepresentation.

349B. SECURITIES REGULATION

II. STATE REGULATION.(Cont'd)

- 324. Persons liable.
- 325. Criminal prosecutions.
- 325.1. — In general.
- 326. — Indictment, information, or complaint.
- 327. — Evidence in general.
- 328. — Weight and sufficiency of evidence.
- 329. — Trial, judgment, and review.

350. SEDUCTION

SUBJECTS INCLUDED

Enticement of an unmarried woman by a man to commit unlawful sexual intercourse with him

Nature and extent of right to recover damages therefor, of a person entitled to the services of such woman, or of the woman herself, or her parent, etc.

Actions for such damages

Criminal responsibility for such seduction and prosecution and punishment thereof as a public offense

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Abduction, offense of, see CRIMINAL LAW
⊞45.10

Alienation of affections of husband or wife, see MARRIAGE AND COHABITATION

Breach of promise of marriage, effect of seduction in actions for, see MARRIAGE AND COHABITATION II(B)

Criminal conversation, see MARRIAGE AND COHABITATION

I. CIVIL LIABILITY, ⊞1-26.

II. CRIMINAL RESPONSIBILITY,
⊞29-54.

I. CIVIL LIABILITY.

- 1. Nature and elements of cause of action in general.

I. CIVIL LIABILITY.(Cont'd)

- 2. Statutory provisions.
- 3. Grounds of action.
- 4. — In general.
- 5. — Acts or conduct constituting seduction.
- 6. — Right of action of woman seduced.
- 7. — Right of action of parent or other relative or guardian.
- 8. — Loss of services or other injury caused.
- 9. Defenses.
- 10. Abatement or survival on death of party.
- 11. Persons entitled to sue.
- 12. Nature and form of remedy.
- 13. Time to sue and limitations.
See also LIMITATION OF ACTIONS.
- 14. Parties and persons liable.
- 15. Process and appearance.
- 16. Pleading.
- 17. Evidence.
- 18. Damages.
- 19. — In general.
- 20. — Elements of compensation.
- 21. — Exemplary.
- 22. — Amount awarded.
- 23. Trial.
- 23.1. — In general.
- 24. — Questions for jury.
- 25. — Instructions.
- 26. — Verdict and findings.

II. CRIMINAL RESPONSIBILITY.

- 29. Nature and elements of offense in general.
- 30. Statutory provisions.
- 31. Capacity to commit offense.
- 32. Persons against whom offense may be committed.
- 33. Acts or conduct constituting seduction.
- 34. Promise of marriage.
- 35. Defilement of female in care, custody, or employment of accused.
- 36. Defenses.
- 37. Indictment and information.
- 38. Evidence.
- 38.1. — In general.
- 39. — Presumptions and burden of proof.
- 40. — Admissibility in general.

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II. CRIMINAL RESPONSIBILITY.(Cont'd)

- 41. — Age of female.
- 42. — Character of female.
- 43. — Promise of marriage.
- 44. — Personal relations of parties.
- 45. — Weight and sufficiency in general.
- 46. — Corroboration.
- 47. Trial.
 - 47.1. — In general.
- 49. — Questions for jury.
- 50. — Instructions.
 - (1). In general.
 - (2). Corroboration of female.
 - (3). Chastity of female.
 - (4). Means used to accomplish seduction.
- 51. — Verdict.
- 52. Appeal and error.
- 53. Sentence and punishment.
- 54. Bonds for discharge from prosecution.

350H. SENTENCING AND PUNISHMENT

SUBJECTS INCLUDED

Punishment of crime in general
Factors considered in determining punishment
Sentencing proceedings
Evidence admissible at sentencing
Construction and operation of sentences imposed
Double punishment and sentencing for different offenses in the same transaction
Sentencing guidelines and their application
Matters related to habitual offenders
Cruel and unusual punishment
The death penalty
Probation and suspension of sentence
Intervention, diversion, and other alternative dispositions
Restitution
Reconsideration and modification of sentence

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Arguments of counsel, see CRIMINAL LAW
Bail and recognizance, see BAIL
Commitment or treatment of addicts, see CHEMICAL DEPENDENTS
Confinement after acquittal or other disposition on ground of mental disorder or insanity, see MENTAL HEALTH
Confrontation of witnesses, see CRIMINAL LAW
Contempt of court, see CONTEMPT
Convicts, disabilities and regulation, see CONVICTS
Costs in criminal prosecutions, see COSTS
Counsel, adequacy of representation, see CRIMINAL LAW
Doctrines of double jeopardy, former jeopardy, autrefois acquit, and autrefois convict, see DOUBLE JEOPARDY
Driver's license suspension and revocation, see AUTOMOBILES
Due process, equal protection, and other constitutional rights and privileges of accused, see also CONSTITUTIONAL LAW
Ex post facto laws, see also CONSTITUTIONAL LAW XXIII
Extent of punishment for particular offenses, except where guidelines are involved, see also ARSON, ASSAULT AND BATTERY, BURGLARY, and other particular topics
Extradition of fugitives, see EXTRADITION AND DETAINERS
Fines in general, see FINES
Fines for particular offenses, see ARSON, ASSAULT AND BATTERY, and other particular topics
Forfeitures, see FORFEITURES, CONTROLLED SUBSTANCES, WEAPONS, and other particular topics
Guilty but mentally ill, confinement after verdict, see MENTAL HEALTH
Instructions on punishment, see CRIMINAL LAW and other particular topics
Judges, qualification and recusal, see JUDGES
Judgments in criminal proceedings, see CRIMINAL LAW
Jury trial, right to and waiver, see JURY

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Juvenile offenders, special rules and proceedings, see also INFANTS

Military cases decided by military courts, see MILITARY JUSTICE

Money recoverable under statutes imposing payment as punishment for violation, see PENALTIES

New trial, application to trial courts for, see CRIMINAL LAW

Pardon, commutation of sentence, and parole, see PARDON AND PAROLE

Post-conviction relief and vacation of judgment, see CRIMINAL LAW

Penal statutes in general, construction of, see CRIMINAL LAW ¶12.7, STATUTES ¶1316

Prisons, jails, penitentiaries, and reformatories, establishment, maintenance, and conditions of confinement, including confinement of pretrial detainees, see PRISONS, INFANTS, CIVIL RIGHTS

Public office, eligibility for after criminal conviction, see PUBLIC EMPLOYMENT, and other particular topics

Reduction of terms of imprisonment by good conduct, see PRISONS

Review on appeal, writ of error, or certiorari, see also CRIMINAL LAW

Security or order to keep the peace, see PROTECTION OF ENDANGERED PERSONS

Sex offenders, commitment, registration and community notification, see MENTAL HEALTH

Witnesses, except for expert witnesses, and their examination, see WITNESSES

Work release, see CONVICTS

Writ of habeas corpus, see HABEAS CORPUS

I. PUNISHMENT IN GENERAL, ¶1-146.

(A) IN GENERAL, ¶1-23.

(B) EXTENT OF PUNISHMENT IN GENERAL, ¶30-39.

(C) FACTORS OR PURPOSES IN GENERAL, ¶40-61.

(D) FACTORS RELATED TO OFFENSE, ¶65-89.

(E) FACTORS RELATED TO OFFENDER, ¶90-117.

I. PUNISHMENT IN GENERAL—Cont'd

(F) FACTORS RELATED TO STATUS OF VICTIM, ¶120-127.

(G) DUAL USE, ¶135-146.

II. SENTENCING PROCEEDINGS IN GENERAL, ¶200-480.

(A) IN GENERAL, ¶200-211.

(B) JURISDICTION, ¶225-229.

(C) PRELIMINARY PROCEEDINGS IN GENERAL, ¶235-249.

(D) MENTAL ILLNESS OR DISORDER OF DEFENDANT, ¶250-272.

(E) PRESENTENCE REPORT, ¶275-301.

(F) EVIDENCE, ¶302-323.

(G) HEARING, ¶325-385.

(H) PROCEEDINGS AFTER GUILTY OR NOLO CONTENDERE PLEA, ¶400-424.

(I) EXECUTION OF SENTENCE, ¶460-467.

(J) STAY OF EXECUTION OF SENTENCE, ¶475-480.

III. SENTENCE ON CONVICTION OF DIFFERENT CHARGES, ¶500-648.

(A) IN GENERAL, ¶500-540.

(B) CONSECUTIVE OR CUMULATIVE SENTENCES, ¶545-621.

1. IN GENERAL, ¶545-548.

2. PARTICULAR OFFENSES, ¶555-578.

3. FACTORS AND PURPOSES, ¶585-612.

4. DUAL USE, ¶620-621.

(C) ACCOMMODATION TO PRIOR OR SUBSEQUENT SENTENCE, ¶630-637.

(D) DISPOSITION, ¶642-648.

IV. SENTENCING GUIDELINES, ¶650-998.

(A) IN GENERAL, ¶650-665.

(B) OFFENSE LEVELS, ¶666-738.

1. IN GENERAL, ¶666-678.

2. FACTORS PECULIAR TO PARTICULAR OFFENSES, ¶679-706.

3. FACTORS APPLICABLE TO SEVERAL OFFENSES, ¶720-738.

(C) ADJUSTMENTS, ¶750-765.

1. IN GENERAL, ¶750.

2. FACTORS INCREASING OFFENSE LEVEL, ¶751-762.

3. FACTORS DECREASING OFFENSE LEVEL, ¶763-765.

(D) MULTIPLE OFFENSES OR COUNTS, ¶770-777.

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IV. SENTENCING GUIDELINES—Cont'd

(E) PRIOR OR SUBSEQUENT MIS-
CONDUCT, ⚭779–799.

(F) DEPARTURES, ⚭800–871.

1. IN GENERAL, ⚭800–809.

2. UPWARD DEPARTURES,
⚭814–848.

3. DOWNWARD DEPARTURES,
⚭850–871.

(G) DUAL OR DUPLICATIVE USE,
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(H) PROCEEDINGS, ⚭930–998.

1. IN GENERAL, ⚭930–948.

2. EVIDENCE, ⚭960–982.

3. HEARING, ⚭985–998.

V. SUFFICIENCY AND CONSTRUCTION
OF SENTENCE IMPOSED,
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(A) IN GENERAL, ⚭1000–1006.

(B) SUFFICIENCY, ⚭1010–1073.

1. IN GENERAL, ⚭1010–1026.

2. PUNISHMENT, ⚭1050–1073.

(C) CONSTRUCTION, ⚭1100–1140.

1. IN GENERAL, ⚭1100–1109.

2. PUNISHMENT, ⚭1115–1140.

(D) CREDITS, ⚭1155–1182.

VI. HABITUAL AND CAREER OFFEND-
ERS, ⚭1200–1426.

(A) IN GENERAL, ⚭1200–1219.

(B) OFFENSES SUBJECT TO EN-
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(C) OFFENSES USABLE FOR EN-
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2. OFFENSES IN OTHER JURISDIC-
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(D) CONVICTIONS AND DISPOS-
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(F) ORDER OF OFFENSES AND CON-
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(G) NUMBER OF PRIOR ADJUDICA-
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(H) DEFECTS IN PRIOR ADJUDICA-
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(I) SUBSEQUENT CIRCUMSTANCES
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(J) DUAL USE, ⚭1345–1352.

(K) PROCEEDINGS, ⚭1355–1399.

(L) PUNISHMENT, ⚭1400–1426.

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(A) IN GENERAL, ⚭1430–1439.

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(C) CRIMINAL LIABILITY,
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(D) PROSECUTIONS, ⚭1460–1469.

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(F) METHODS OF PUNISHMENT,
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(G) CONFINEMENT, ⚭1527–1531.

(H) CONDITIONS OF CONFINEMENT,
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(J) ALTERNATIVES TO INCARCERA-
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(K) CIVIL MATTERS, ⚭1580–1602.

(L) JUVENILE JUSTICE, ⚭1605–1607.

VIII. THE DEATH PENALTY,
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(A) IN GENERAL, ⚭1610–1634.

(B) PERSONS ELIGIBLE, ⚭1640–1644.

(C) FACTORS AFFECTING IMPOSI-
TION IN GENERAL,
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(E) FACTORS RELATED TO OFFEND-
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(F) FACTORS RELATED TO STATUS
OF VICTIM, ⚭1725–1735.

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1. IN GENERAL, ⚭1736–1748.

2. EVIDENCE, ⚭1750–1773.

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IX. PROBATION AND RELATED DISPO-
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(A) IN GENERAL, ⚭1800–1828.

(B) GROUNDS AND CONSIDER-
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(G) CONDITIONS OF PROBATION,
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IX. PROBATION AND RELATED DISPOSITIONS—Cont'd

(H) SEARCHES AND SEIZURES, § 1990–1996.

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1. IN GENERAL, § 2000–2001.

2. FACTORS AFFECTING REVOCATION, § 2002–2006.

3. PROCEEDINGS, § 2009–2031.

4. DISPOSITION OF OFFENDER, § 2032–2041.

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(A) IN GENERAL, § 2045–2057.

(B) MATTERS AFFECTING ELIGIBILITY, § 2058–2068.

(C) PROCEEDINGS, § 2070–2079.

(D) TERMS AND CONDITIONS, § 2082–2085.

(E) TERMINATION, § 2086–2094.

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XI. RESTITUTION, § 2100–2217.

(A) IN GENERAL, § 2100–2110.

(B) PERSONS ENTITLED TO RESTITUTION, § 2120–2125.

(C) FACTORS RELATED TO OFFENDER, § 2130–2138.

(D) COMPENSABLE LOSSES, § 2141–2159.

(E) AMOUNT, § 2160–2179.

(F) PROCEEDINGS, § 2180–2201.

(G) PAYMENT, § 2205–2217.

XII. RECONSIDERATION AND MODIFICATION OF SENTENCE, § 2220–2335.

(A) IN GENERAL, § 2220–2241.

(B) GROUNDS AND CONSIDERATIONS, § 2250–2265.

(C) PROCEEDINGS, § 2270–2318.

1. IN GENERAL, § 2270–2285.

2. EVIDENCE, § 2286–2301.

3. HEARING AND DETERMINATION, § 2302–2318.

(D) DISPOSITION, § 2325–2335.

I. PUNISHMENT IN GENERAL.

(A) IN GENERAL.

1. In general.
2. Authority to impose.
3. Persons subject to punishment in general.
4. Necessity of conviction.
5. Constitutional, statutory, and regulatory provisions.
6. — In general.
7. — Purpose.
8. — Validity.

I. PUNISHMENT IN GENERAL.(Cont'd)

9. — Amendment.
10. — Repeal.
11. — Construction.
12. — Time of taking effect.
13. Retroactive operation.
14. — In general.
15. — Law in effect at time of crime as controlling.
16. — Particular statutes.
17. — Amendment or other modification.
 - (1). In general.
 - (2). Increase in punishment.
 - (3). Reduction or amelioration of punishment.
18. Adoption of code.
19. Choice or election of statute to be applied.
20. — In general.
21. — Effect of ambiguity or uncertainty.
22. — Election by defendant.
23. — Election by prosecution.

(B) EXTENT OF PUNISHMENT IN GENERAL.

30. In general.
31. Discretion of court.
Effect of statute, see § 35.
32. What is excessive punishment in general.
33. Effect of statute or regulatory provision.
34. — In general.
35. — Discretion of court.
36. Policy considerations.
37. Necessity that punishment be individualized.
38. Proportionality to offense.
39. Uniform and disparate treatment of offenders.

(C) FACTORS OR PURPOSES IN GENERAL.

40. In general.
41. Deterrence.
42. Protection of society.
43. Denunciation of crime.
44. Retribution.
45. Rehabilitation and reform.
46. Passion and prejudice.
47. Race and ethnicity.
Racial prejudice as motive for crime, see § 70.
48. Religious, moral, and philosophical matters.

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I. PUNISHMENT IN GENERAL.(Cont'd)

49. Sympathy and mercy.
50. Facts and circumstances of particular case in general.
51. Factors extrinsic to statute or guideline in general.
52. Vindictiveness in general.
Vindictiveness in response to exercise of rights, see [§115](#).
53. Aggravating circumstances in general.
54. Mitigating circumstances in general.
55. Comparison with dispositions in other cases.
56. Sentence or disposition of co-participant or codefendant.
57. Opinions and recommendations of officials and others.
58. Manner and effect of weighing or considering factors.
59. Effect of applying invalid factor.
60. Plea bargain or other agreement.
Validity and construction of plea bargain, see CRIMINAL LAW [§273.1\(2\)](#).
61. Determinations based on multiple factors.

(D) FACTORS RELATED TO OFFENSE.

65. In general.
66. Nature, degree or seriousness of offense.
67. Extent of offender's participation.
68. Intent, planning, premeditation.
69. Motive.
70. Racial or other prejudice as motive.
71. Pecuniary motive.
72. Justification for conduct.
73. Victim's participation or provocation.
74. Coercion or duress.
75. Use of force or violence.
76. Weapons.
Application of sentencing guidelines, see [§726](#).
77. — In general.
78. — What constitutes a weapon.
See also ASSAULT AND BATTERY [§56](#) and *WEAPONS* [§109 et seq.](#)
79. — Possession and carrying.
80. — Use.
81. — Accomplices and co-participants.
82. Brutality or cruelty in commission of offense.
83. Endangering public or bystanders.
84. Degree of harm caused by offense in general.

I. PUNISHMENT IN GENERAL.(Cont'd)

85. Physical injury and degree thereof.
86. Mental or psychological injury or trauma.
87. Harm to third persons or to institutions.
88. Attempt or other inchoate offense.
89. Other offense-related considerations.

(E) FACTORS RELATED TO OFFENDER.

90. In general.
91. Gender.
92. Offender's character in general.
93. Other offenses, charges, misconduct.
94. — In general.
95. — Nature, degree, or seriousness of other misconduct.
96. — Misconduct in same transaction or incident.
97. — Similarity to present offense.
98. — Arrests, charges, or unadjudicated misconduct.
99. — Time of other offense or misconduct.
100. — Defects in prior adjudication.
101. — Juvenile record.
102. — Lack of significant prior record.
103. Mental illness or disorder.
104. Emotional disturbance at time of offense.
105. Substance abuse and addiction.
106. Intoxication or drug impairment at time of offense.
107. Low intelligence or mental retardation.
108. Age.
Youthful offender status, see INFANTS [§69](#).
109. Physical illness or disability.
110. Childhood or familial background.
111. Existing social ties and responsibilities.
112. Actual or potential rehabilitation.
113. Perjury or other untruthfulness.
114. Remorse, acceptance of responsibility, and cooperation.
115. Exercise of rights.
 - (1). In general.
 - (2). Right to silence.
 - (3). Right to stand trial.
 - (4). Right to appeal or other review.
116. Dangerousness.
117. Other offender-related considerations.

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(F) FACTORS RELATED TO STATUS OF VICTIM.

- 120. In general.
- 121. Vulnerability.
- 122. Age.
- 123. Economic and social status.
- 124. Public official or employee.
- 125. Witnesses.
- 126. Victim's family status.
- 127. Relationship between defendant and victim.

(G) DUAL USE.

- 135. In general.
- 136. Facts inherent in conduct constituting offense.
- 137. Elements of offense.
- 138. — In general.
- 139. — Weapons and dangerous instruments.
- 140. — Harm, injury, and death.
- 141. — Other offenses or charges.
- 142. — Status of victim.
- 143. Fact determining grade or degree of offense.
- 144. Multiple enhancements based on one factor.
- 145. Use of same factor to enhance different sentences.
- 146. Offenses committed in same transaction or course of conduct.

II. SENTENCING PROCEEDINGS IN GENERAL.

Instructions to jury, see also CRIMINAL LAW.

(A) IN GENERAL.

- 200. In general.
- 201. Duties of court or judge in general.
- 202. Discretion of court.
- 203. Constitutional, statutory and other regulatory provisions.
- 204. — In general.
- 205. — Purpose.
- 206. — Validity.
- 207. — Amendment.
- 208. — Repeal.
- 209. — Construction.
- 210. — Time of taking effect.
- 211. — Retroactive operation.

(B) JURISDICTION.

- 225. In general.
- 226. Retention of jurisdiction.
- 227. Relinquishment of jurisdiction.
- 228. Loss or termination of jurisdiction.
Effect of inordinate delay, see 384.
- 229. Objections and disposition thereof.

(C) PRELIMINARY PROCEEDINGS IN GENERAL.

- 235. In general.
- 236. Notice of evidence, witnesses, and sentencing factors.
- 237. — In general.
- 238. — Necessity.
- 239. — Time.
- 240. — Requisites and sufficiency.
- 241. Notice of potential sentence.
- 242. Other discovery and disclosure.
Disclosure of presentence report, see 292. Results of psychological or psychiatric examination, see 263.
- 243. — In general.
- 244. — Necessity.
- 245. — Time.
- 246. — Requisites and sufficiency.
- 247. Failure to give notice or make disclosure.
- 248. Physical or other examination of defendant.
Psychological or psychiatric examination, see 258.
- 249. Objections and disposition thereof.

(D) MENTAL ILLNESS OR DISORDER OF DEFENDANT.

Capital cases, see 1791–1794.

- 250. In general.
- 251. Discretion of court.
- 252. Competency.
Competency to stand trial, see MENTAL HEALTH 432.
- 253. — In general.
- 254. — Mental retardation.
- 255. Counsel.
- 256. Information, conduct, or circumstance raising question of competency.
- 257. Motion, petition, or plea.
- 258. Psychological or psychiatric examination.
Examination before conviction, see MENTAL HEALTH 434. Right to payment for examination, see COSTS.
- 259. — In general.
- 260. — Necessity of examination.
- 261. — Conduct of examination.

350H. SENTENCING AND PUNISHMENT

**II. SENTENCING PROCEEDINGS
IN GENERAL (Cont'd)**

- 262. — Use and effect.
- 263. Disclosure.
- 264. Evidence.
 - (1). In general.
 - (2). Presumptions.
 - (3). Burden of proof.
 - (4). Admissibility.
 - (5). Degree of proof.
 - (6). Sufficiency.
- 265. Questions of law or fact.
- 266. Hearing.
- 267. — In general.
- 268. — Necessity.
- 269. — Conduct of hearing.
- 270. — Findings and conclusions.
- 271. Decision or order.
- 272. Objections and disposition thereof.

(E) PRESENTENCE REPORT.

- 275. In general.
- 276. Necessity.
- 277. Request or motion.
- 278. Waiver of report.
- 279. Preparation of report.
- 280. Counsel.
- 281. Form and contents.
- 282. — In general.
- 283. — Reliability, credibility, and accuracy.
- 284. — Hearsay.
- 285. — Anonymous or confidential informants.
- 286. — Information from victim or victim's representative.
- 287. — Legality of information.
- 288. — Other offenses, charges, or misconduct.
- 289. — Other particular issues.
- 290. Successive, supplemental and updated report.
- 291. Resentencing.
- 292. Disclosure of report.
- 293. — In general.
- 294. — Disclosure to defendant.
- 295. — Disclosure to defense counsel.
- 296. — Disclosure to third parties.
- 297. — Sufficiency of disclosure.

**II. SENTENCING PROCEEDINGS
IN GENERAL (Cont'd)**

- 298. — Editing and redaction.
- 299. Objections and disposition thereof.
- 300. Use and effect of report.
- 301. Effect of inaccuracy or uncorrected defect.

(F) EVIDENCE.

- 302. In general.
- 303. Applicability of rules of evidence in general.
- 304. Discretion of court.
- 305. Presumptions.
- 306. Burden of proof.
- 307. Admissibility in general.
- 308. — In general.
- 309. — Nature and circumstances of offense.
- 310. — Harm or injury attributable to offense.
- 311. Evidence from prior proceedings.
- 312. Defendant's character.
- 313. Other offenses, charges, misconduct.
- 314. Records and papers from guilt phase.
- 315. Demonstrative evidence.
- 316. Declarations and confessions.
- 317. Hearsay.
- 318. Documentary evidence.
- 319. Opinion evidence.
- 320. Expert evidence.
- 321. Wrongfully obtained evidence.
- 322. Degree of proof.
- 322.3. — In general.
- 322.5. — Factors enhancing sentence.
- 323. Sufficiency.

(G) HEARING.

- 325. In general.
- 326. Discretion of court.
- 327. Necessity that trial judge preside.
- 328. Scope of inquiry.
- 329. Questions of law or fact.
- 330. Necessity of hearing.
- 331. — In general.
- 332. — Request for hearing.
- 333. — Waiver.
- 334. Bifurcated proceeding in general.
- 335. Use of jury.
Constitutional right to have jury determine punishment, see JURY ¶24.

350H. SENTENCING AND PUNISHMENT

II. SENTENCING PROCEEDINGS IN GENERAL.(Cont'd)

- 336. Necessity for new jury.
- 337. Time for hearing.
- 338. — In general.
- 339. — Continuance.
- 340. Presence of defendant.
- 341. — In general.
- 342. — Time, stage, or character of proceedings.
- 343. — Nature or degree of offense.
- 344. — Actual or potential punishment.
Includes capital cases.
- 345. — Voluntary absence and waiver.
- 346. — Other particular issues.
- 347. Counsel.
- 348. — In general.
- 349. — Waiver or appearance pro se.
- 350. Advice and warnings.
- 351. — In general.
- 352. — Matters related to appeal.
- 353. — Advice as to post-conviction or other collateral relief.
- 354. — Other particular issues.
- 355. Allocution.
- 356. — In general.
- 357. — Nature or degree of offense.
- 358. — Actual or potential punishment.
Includes capital cases.
- 359. — Requisites and sufficiency.
- 360. — Waiver.
- 361. Statement by victim or victim's representative.
- 362. Remarks and conduct of court.
- 363. Reception of evidence.
- 364. — In general.
- 365. — Order of proof.
- 366. — Rebuttal.
- 367. — Reopening.
- 368. — Objections and disposition thereof.
- 368.5. Instructions.
- 369. Findings and statement of reasons.
- 370. — In general.
- 371. — Purpose.
- 372. — Necessity.
- 373. — Sufficiency.
- 374. — Objections and disposition thereof.
- 375. Verdict.
- 376. Time for imposing sentence.
- 377. — In general.

II. SENTENCING PROCEEDINGS IN GENERAL.(Cont'd)

- 378. — Necessary or mandatory delay.
- 379. — Deferral of sentence.
- 380. — Applicability and operation of speedy trial guarantee.
- 381. — Extension of time.
- 382. — Length of delay.
- 383. — Consent and waiver.
- 384. — Effect of delay and remedy.
Includes loss of jurisdiction.
- 385. Objections and disposition thereof.

(H) PROCEEDINGS AFTER GUILTY OR NOLO CONTENDERE PLEA.

Includes procedural matters peculiar to sentencing following plea of guilty or nolo contendere. Terms of plea bargain or other agreement as factor in determining punishment, see ¶60 above. Voluntariness of plea and validity of plea agreement, see CRIMINAL LAW ¶273, 275. Sufficiency of plea allocution, see CRIMINAL LAW ¶273.1(4), 275.

- 400. In general.
- 401. Authority of court.
- 402. Necessity that judge who accepted plea impose sentence.
- 403. Scope of inquiry after guilty or nolo contendere plea.
- 404. — In general.
- 405. — New matters.
- 406. — Doubt as to guilt.
- 407. — Matters related to plea.
- 408. — Nature, degree, and circumstances of offense.
- 409. — Other particular matters.
- 410. Information or evidence.
- 411. — In general.
- 412. — Presumptions.
- 413. — Burden of proof.
- 414. — Admissibility.
- 415. — Degree of proof.
- 416. — Sufficiency.
- 417. Questions of law or fact.
- 418. Hearing.
- 419. — In general.
- 420. — Necessity for hearing.
- 421. — Conduct of hearing.
- 422. — Advice and warnings.
- 423. Findings and statement of reasons.
- 424. Decision or order.

350H. SENTENCING AND PUNISHMENT

(I) EXECUTION OF SENTENCE.

Execution of death sentence, see VIII(H).

- 460. In general.
- 461. Commitment or mittimus.
- 462. — In general.
- 463. — What is a commitment or mittimus.
- 464. — Time for issuance.
- 465. — Form and requisites.
- 466. — Amendment and correction.
- 467. — Objections.

(J) STAY OF EXECUTION OF SENTENCE.

Stay of execution of death sentence, see VIII(H).

- 475. In general.
- 476. Authority to grant.
- 477. Application or motion.
- 478. Grounds and purposes.
- 479. Time of stay.
- 480. Effect.

III. SENTENCE ON CONVICTION OF DIFFERENT CHARGES.

Criminal liability for several offenses in same transaction, see CRIMINAL LAW ¶29. Merger of offenses, see CRIMINAL LAW ¶30. Double jeopardy, see DOUBLE JEOPARDY.

(A) IN GENERAL.

Consecutive or concurrent service of sentences, see III(B).

- 500. In general.
- 501. Merger.
- 502. Constitutional, statutory, and regulatory provisions.
- 503. — In general.
- 504. — Purpose.
- 505. — Validity.
- 506. — Retroactive operation.
- 507. Same offense in general.
- 508. Single transaction or course of conduct.
- 509. — In general.
- 510. — Legislative intent as to punishment.
- 511. — Proof of fact not required for other offense.
- 512. — Sufficiency of evidence of one offense to sustain conviction for the other.
- 513. — Identity of intent or objective.
- 514. Lesser and included offenses in general.

III. SENTENCE ON CONVICTION OF DIFFERENT CHARGES.(Cont'd)

515. Particular offenses.

¶516–539 include, in descending order, both multiple charges of the described offense and charges of the described offense and another offense; e.g., sentence on multiple convictions of robbery, and sentence on conviction of robbery and assault, both go to ¶537.

- 516. — In general.
- 517. — Arson and malicious mischief.
- 518. — Assault and battery.
Vehicular assault, see ¶534.
- 519. — Burglary and trespass.
- 520. — Conspiracy and racketeering.
 - (1). In general.
 - (2). Single or multiple conspiracies.
 - (3). Conspiracy and substantive or predicate offense.
- 521. — Counterfeiting and forgery.
- 522. — Criminal sexual conduct, incest, and prostitution.
- 523. — Disorderly conduct and breach of the peace.
- 524. — Drugs and narcotics.
- 525. — Escape.
- 526. — Extortion, threats, stalking, and harassment.
- 527. — False pretenses and fraud.
- 528. — Gambling offenses.
- 529. — Homicide, mayhem, and assault with intent to kill.
Vehicular homicide, see ¶534.
- 530. — Infants, offenses specific to.
Sex offenses, see ¶522.
- 531. — Kidnapping and false imprisonment.
- 532. — Larceny, embezzlement, and receiving stolen property.
- 533. — Liquor offenses.
- 534. — Motor vehicle offenses.
- 535. — Obscenity and lewdness.
- 536. — Obstructing justice, bribery, and perjury.
- 537. — Robbery.
- 538. — Tax offenses.
- 539. — Weapons and explosives.
- 540. Multiple victims.

(B) CONSECUTIVE OR CUMULATIVE SENTENCES.

1. IN GENERAL.

- 545. In general.
- 546. Authority to impose.
- 547. Right to have sentences run concurrently.
- 548. Discretion of court.

350H. SENTENCING AND PUNISHMENT

2. PARTICULAR OFFENSES.

555. In general.
§§555–578 include, in descending order, both multiple charges of the described offense and charges of the described offense and another offense; e.g., sentence on multiple convictions of robbery, and sentence on conviction of robbery and assault, both go to §576.
556. Arson and malicious mischief.
557. Assault and battery.
Vehicular assault, see §573.
558. Burglary and trespass.
559. Conspiracy and racketeering.
(1). In general.
(2). Single or multiple conspiracies.
(3). Conspiracy and substantive or predicate offense.
560. Counterfeiting and forgery.
561. Criminal sexual conduct, incest, and prostitution.
562. Disorderly conduct and breach of the peace.
563. Drugs and narcotics.
564. Escape.
565. Extortion, threats, stalking, and harassment.
566. False pretenses and fraud.
567. Gambling offenses.
568. Homicide, mayhem, and assault with intent to kill.
Vehicular homicide, see §573.
569. Infants, offenses specific to.
Sex offenses, see §561.
570. Kidnapping and false imprisonment.
571. Larceny, embezzlement, and receiving stolen property.
572. Liquor offenses.
573. Motor vehicle offenses.
574. Obscenity and lewdness.
575. Obstructing justice, bribery, and perjury.
576. Robbery.
577. Tax offenses.
578. Weapons and explosives.

3. FACTORS AND PURPOSES.

585. In general.
586. Deterrence.
587. Protection of society.
588. Rehabilitation and reform.
589. Aggravating circumstances in general.
590. Mitigating circumstances in general.
591. Distinct offenses.
592. Grade or degree of offense.

III. SENTENCE ON CONVICTION OF DIFFERENT CHARGES.(Cont'd)

593. — In general.
594. — Misdemeanors.
595. Offense committed while in custody.
596. Offense committed while on bail, probation, or parole.
597. Violent or nonviolent character of offense.
598. Weapons and dangerous instruments.
599. Brutality, cruelty, heinousness.
600. Nature and degree of harm or injury.
601. Offender's criminal history or other misconduct.
602. Dangerousness.
603. Offenses committed in one transaction, episode, or course of conduct.
604. — In general.
605. — Separate acts.
606. — Distinct offenses.
607. — Proof of fact not required for other offense.
608. — "Same evidence" test; sufficiency of evidence of one offense to sustain conviction for the other.
609. — Intent, objective, and motive.
610. Offense committed to facilitate other offense.
611. Multiple victims.
612. Plea bargain or other agreement.

4. DUAL USE.

620. In general.
621. Same factor supporting consecutive sentence and other enhancement.

(C) ACCOMMODATION TO PRIOR OR SUBSEQUENT SENTENCE.

630. In general.
631. Sentence consecutive to other sentence.
632. Sentence in other jurisdiction.
633. — In general.
634. — Sentence in other state.
635. — State and federal sentences.
636. Sentence not yet imposed.
637. Offense committed by prisoner or while under legal restraint.

(D) DISPOSITION.

642. In general.

350H. SENTENCING AND PUNISHMENT

III. SENTENCE ON CONVICTION OF DIFFERENT CHARGES.(Cont'd)

- 643. Length of total or aggregate sentence in general.
- 644. Total sentence deemed excessive.
- 645. Total sentence deemed not excessive.
- 646. Life imprisonment.
- 647. — In general.
- 648. — Term consecutive to life sentence.

IV. SENTENCING GUIDELINES.

Probation and supervised release, see IX. Habitual offenders and career criminals, see VI.

(A) IN GENERAL.

- 650. In general.
- 651. Operation and effect of guidelines in general.
- 652. Applicability of guidelines in general.
- 653. What guideline applies; choice of guideline.

Retroactive application, see ¶664. Time of taking effect, see ¶663.

- (1). In general.
 - (2). Offenses against the person.
 - (3). Property offenses.
 - (4). Public officials.
 - (5). Drugs.
 - (6). Criminal enterprises and racketeering.
 - (7). Fraud and deceit.
 - (8). Prostitution, sexual exploitation, and obscenity.
 - (9). Administration of justice.
 - (10). Explosives, arson, and firearms.
 - (11). Money laundering.
 - (12). Taxation.
 - (13). Other substantive offenses.
 - (14). Conspiracies, attempts, and solicitations.
 - (15). Accessories and misprision.
 - 654. Effect on judicial discretion.
 - 655. Constitutional, statutory, and regulatory provisions.
 - 656. — In general.
 - 657. — Purpose.
 - 658. — Validity.
 - 659. — Adoption or enactment.
 - 660. — Amendment.
- Retroactive operation, see ¶664.*
- 661. — Construction in general.

IV. SENTENCING GUIDELINES.(Cont'd)

- 661.5. — Mandatory or advisory.
- 662. — Conflict with statute.
- 663. — Time of taking effect.
- 664. — Retroactive operation.
 - (1). In general.
 - (2). Offense committed before effective date of guideline.
 - (3). Amendment or revision of guideline.
 - (4). — In general.
 - (5). — Nature of amendment or revision.
 - (6). Continuing offenses.
- 665. Commentary and policy statements.

(B) OFFENSE LEVELS.

1. IN GENERAL.

- 666. In general.
- 667. Relevant conduct.
- 668. — In general.
- 669. — Acts and omissions committed, aided, or caused.
- 670. Controlled substances in general.
- 671. Activity in concert with others.
- 672. — In general.
- 673. — Scope of activity undertaken.
- 674. — Conduct in furtherance of jointly undertaken activity.
- 675. — Reasonably foreseeable acts and omissions.
- 676. Course of conduct.
- 677. Common scheme or plan.
- 678. Harm resulting or intended.

2. FACTORS PECULIAR TO PARTICULAR OFFENSES.

- 679. In general.
- 680. Arson and malicious mischief.
- 681. Assault and battery.
- 682. Burglary and trespass.
- 683. Conspiracy and racketeering.
- 684. Counterfeiting and forgery.
- 685. Disorderly conduct and breach of the peace.
- 686. Drugs and narcotics.
- 687. Escape.
- 688. Extortion and threats.
- 689. False pretenses and fraud.

350H. SENTENCING AND PUNISHMENT

IV. SENTENCING GUIDELINES.(Cont'd)

- 690. Gambling offenses.
- 691. Homicide, mayhem, and assault with intent to kill.
- 692. Infants, offenses specific to.
Sex offenses, see §703.
- 693. Kidnapping and false imprisonment.
- 694. Larceny and embezzlement.
- 695. Liquor offenses.
- 696. Money laundering.
- 697. Motor vehicle offenses.
- 698. Obscenity and lewdness.
- 699. Obstructing justice and bribery.
- 700. Perjury.
- 701. Receiving stolen goods.
- 702. Robbery.
- 703. Sex offenses, incest, and prostitution.
- 704. Tax offenses.
- 705. Weapons and explosives.
- 706. Other particular offenses.

3. FACTORS APPLICABLE TO SEVERAL OFFENSES.

- 720. In general.
- 721. Pecuniary or profit motive.
- 722. Offense resulting in death.
- 723. Bodily injury and degree thereof.
- 724. Risk of death or bodily injury.
- 725. Planning.
- 726. Dangerous weapons or destructive devices.
 - (1). In general.
 - (2). What constitutes a weapon.
 - (3). Possession and carrying.
 - (4). Use.
 - (5). Accomplices and co-participants.
- 727. Sophistication in commission or concealment.
- 728. Use or threat of force.
- 729. Damage to property.
- 730. Abducting or restraining person.
- 731. Facilitation of other offense.
- 732. Age of victim.
- 733. Official or governmental victim.
- 734. Repetitive or ongoing conduct.
- 735. Business and organized scheme.
- 736. Value of loss or benefit.
- 737. Disrupting or jeopardizing institution.
- 738. Bargain, agreement, consent, or waiver.

(C) ADJUSTMENTS.

1. IN GENERAL.

- 750. In general.

2. FACTORS INCREASING OFFENSE LEVEL.

- 751. In general.
- 752. Organizers, leaders, managerial role.
- 753. Hate crimes; prejudice as motive.
- 754. Vulnerability of victim.
- 755. Official victim.
- 756. Restraint of victim.
- 757. Terrorism.
- 758. Abuse of position of trust.
- 759. Use of special skill.
- 760. Involving minor in commission of crime.
- 761. Obstruction of justice.
- 762. Endangerment.

3. FACTORS DECREASING OFFENSE LEVEL.

- 763. In general.
- 764. Minor or minimal participation.
- 765. Acceptance of responsibility.

(D) MULTIPLE OFFENSES OR COUNTS.

- 770. In general.
- 771. Grouping in general.
- 772. Same or inseparable harm or injury in general.
- 773. Single act or transaction.
- 774. Acts or conduct connected by common objective or plan.
- 775. Continuing offenses.
- 776. More than one victim.
- 777. Other particular problems.

(E) PRIOR OR SUBSEQUENT MISCONDUCT.

Includes prior or subsequent misconduct as affecting criminal history category or offense level. Prior or subsequent misconduct as ground for departure, see §831 et seq. Inadequacy of criminal history category as ground for departure, see §841. Habitual offenders and career criminals, see VI.

- 779. In general.
- 780. Grade, degree or classification of other offense.
- 781. Crime of violence.
- 782. Arrests, charges, and unadjudicated misconduct.
- 783. Offense committed while in custody or under restraint.
- 784. Nature of conviction or adjudication.

350H. SENTENCING AND PUNISHMENT

IV. SENTENCING GUIDELINES.(Cont'd)

- 785. — In general.
- 786. — Intervention, diversion, and withheld adjudication.
- 787. — Juvenile or youthful offender adjudication.
- 788. Disposition.
- 789. — In general.
- 790. — Probation and suspension of sentence.
- 791. — Sentence of imprisonment.
- 792. — Length of sentence.
- 793. Offense or adjudication in other jurisdiction.
- 794. Time.
- 795. Order.
- 796. Number.
- 797. Related cases.
- 798. Defects in other adjudication.
- 799. Effect of subsequent circumstances.

(F) DEPARTURES.

1. IN GENERAL.

- 800. In general.
- 801. Discretion of court.
- 802. What constitutes departure.
- 803. Grounds for departure.
- 804. — In general.
- 805. — Disagreement with guidelines.
- 806. — Atypical or unusual case in general.
- 807. — Factor not adequately taken into account.
- 808. — Factor present to unusual degree.
- 809. — Bargain, agreement, consent, or waiver.

2. UPWARD DEPARTURES.

- 814. In general.
- 815. Discretion of court.
- 816. Insufficiency of guidelines sentence.
- 817. Protection of community in general.
- 818. Offense-related factors.
- 819. — In general.
- 820. — Scope, seriousness, and gravity of offense.
- 821. — Use of weapon or destructive device.
- 822. — Involvement of gang.

IV. SENTENCING GUIDELINES.(Cont'd)

- 823. — Abuse of office or trust.
- 824. — Risk or endangerment to others.
- 825. — Excessive force, brutality, extreme conduct.
- 826. Offender-related factors.
- 827. — In general.
- 828. — Lack of remorse and failure to cooperate.
- 829. — Exercise of rights.
- 830. — Future dangerousness; need for treatment.
- 831. Other offenses, misconduct or charges.
- 832. — In general.
- 833. — Connected or inseparable offenses.
- 834. — Arrests or charges; necessity of conviction.
- 835. — Substance abuse and intoxication.
- 836. — Misconduct while on probation, bail or similar status.
- 837. — Escalating criminal behavior.
- 838. — Juvenile record or disposition.
- 839. — Timing of offense.
- 840. — Perjury or other untruthfulness.
- 841. Inadequacy of criminal history category.
- 842. Victim-related factors.
- 843. — In general.
- 844. — Extreme injury, trauma, or loss.
- 845. — Kidnapping; restraint.
- 846. — Vulnerability of victim.
- 847. Other particular grounds.
- 848. Bargain, agreement, consent, or waiver.

3. DOWNWARD DEPARTURES.

- 850. In general.
- 851. Discretion of court.
- 852. Excessiveness of guidelines sentence.
- 853. Offense-related factors.
- 854. — In general.
- 855. — Scope, seriousness or degree of offense.
- 856. — Defendant's role in offense.
- 857. — Provocation, participation or condonation by victim.
- 858. — Duress and compulsion.
- 859. Offender-related factors.
- 860. — In general.
- 861. — Remorse, cooperation, assistance.
- 862. — Mental illness or reduced capacity.

350H. SENTENCING AND PUNISHMENT

IV. SENTENCING GUIDELINES.(Cont'd)

- 863. — Physical illness or infirmity.
- 864. — Drug or alcohol addiction or dependence.
- 865. — Age.
- 866. — Family, community or business ties and obligations.
- 867. — Disadvantaged childhood or youth.
- 868. — Absence of prior record.
- 869. — Rehabilitation.
- 870. Other particular grounds.
- 871. Bargain, agreement, consent, or waiver.

(G) DUAL OR DUPLICATIVE USE.

See also DOUBLE JEOPARDY.

- 900. In general.
- 901. Factor inherent in or element of offense in general.
- 902. Factor taken into account by guidelines in general.
- 903. Particular cases and problems.
Includes, in descending order, all determinations regarding alleged duplicative use of factors, e.g., an allegation encompassing a base offense level and a departure would be classified at the line for departures.
- 904. — In general.
- 905. — Base offense level.
- 906. — Adjustments.
- 907. — Multiple offenses or counts.
- 908. — Criminal history.
- 909. — Departures.

(H) PROCEEDINGS.

1. IN GENERAL.

- 930. In general.
- 931. Counsel.
- 932. Advice and notice.
- 933. — In general.
- 934. — Necessity.
- 935. — Requisites and sufficiency.
- 936. Other discovery and disclosure.
- 937. Pleadings and motions.
- 938. — In general.
- 939. — Motion for departure in general.
- 940. — Discretion of prosecutor or government.
- 941. — Necessity of motion by government.
- 942. — Time for motion.
- 943. — Requisites of motion.

IV. SENTENCING GUIDELINES.(Cont'd)

- 944. — Effect of motion.
- 945. — Motion by defendant.
- 946. Refusal to seek downward departure.
- 947. Effect of cooperation agreement or other promise or representation.
- 948. Request for or election of guidelines sentence.

2. EVIDENCE.

- 960. In general.
- 961. Discretion of court.
- 962. Presumptions.
- 963. Burden of proof.
- 964. Admissibility in general.
- 965. Evidence from prior proceedings.
- 966. Demonstrative evidence.
- 967. Hearsay.
- 968. Declarations and confessions.
- 969. Documentary evidence.
- 970. Opinion evidence.
- 971. Expert evidence.
- 972. Wrongfully obtained evidence.
- 973. Degree of proof.
- 973.3. — In general.
- 973.5. — Factors enhancing sentence.
- 974. Sufficiency.
- 975. — In general.
- 976. — Defendant's role in offense.
- 977. — Obstruction of justice.
- 978. — Amount and degree of loss or injury.
- 979. — Quantity of drugs and drug-related matter.
- 980. — Matters related to firearms and destructive devices.
- 981. — Remorse, cooperation and acceptance of responsibility.
- 982. — Other offenses, misconduct, or charges.

3. HEARING.

- 985. In general.
- 986. Discretion of court.
- 987. Scope of inquiry.
- 988. Questions of law or fact.
- 989. Necessity for hearing.
- 990. Time for hearing.
- 991. Conduct of hearing.

350H. SENTENCING AND PUNISHMENT

IV. SENTENCING GUIDELINES.(Cont'd)

- 991.5. Instructions.
- 992. Findings and statement of reasons.
- 993. — In general.
- 994. — Purpose.
- 995. — Necessity.
- 996. — Sufficiency.
- 997. — Objections and disposition thereof.
- 998. Decision or order.

V. SUFFICIENCY AND CONSTRUCTION OF SENTENCE IMPOSED.

Includes matters concerning the formal or technical sufficiency of sentences. Includes interpretation, construction, and effect of sentences. Restitution, see Ⓒ2196.

(A) IN GENERAL.

- 1000. In general.
- 1001. What is a sentence.
- 1002. Constitutional, statutory, and regulatory provisions.
- 1003. — In general.
- 1004. — Purpose.
- 1005. — Validity.
- 1006. — Retroactive operation.

(B) SUFFICIENCY.

1. IN GENERAL.

Habitual offenders, see Ⓒ1397. Death penalty, see Ⓒ1787.

- 1010. In general.
- 1011. Contents of sentence in general.
- 1012. Necessity of writing.
- 1013. Certainty and definiteness.
- 1014. — In general.
- 1015. — Effect of uncertainty.
- 1016. Designation of defendant.
- 1017. Designation of offense.
- 1018. — In general.
- 1019. — Grade or degree.
- 1020. Multiple counts or charges.
- 1021. — In general.
- 1022. — Specification of count or charge.
- 1023. Reference to or recital of statute.
- 1024. Recitations relating to procedure.
- 1025. Signature.
- 1026. Date.

2. PUNISHMENT.

- 1050. In general.

V. SUFFICIENCY AND CONSTRUCTION OF SENTENCE IMPOSED.(Cont'd)

- 1051. Imprisonment.
- 1052. — In general.
- 1053. — Duration.
Credits against sentence, see Ⓒ1073.
- 1054. — Commencement and termination.
- 1055. Life imprisonment.
- 1056. Indeterminate term.
- 1057. — In general.
- 1058. — Minimum term.
- 1059. — Maximum term.
- 1060. Multiple counts or charges.
- 1061. Accommodation to sentence imposed in other proceeding.
- 1062. Concurrent or consecutive terms.
- 1063. — In general.
- 1064. — Consecutive terms.
- 1065. — Commencement of second or successive term.
- 1066. Place where sentence is to be served.
- 1067. Incidents of sentence.
- 1068. Fines.
- 1069. — In general.
- 1070. — Fine and other punishment.
- 1071. Alternative dispositions.
- 1072. Restitution.
- 1073. Credits.

Effect of provisions relating to credits, see V(D). Entitlement to credits or offsets against sentences, see V(D).

(C) CONSTRUCTION.

1. IN GENERAL.

- 1100. In general.
- 1101. Intent of court.
- 1102. Meaning of language.
- 1103. Existence of ambiguity.
- 1104. Sentence as a whole.
- 1105. Extrinsic aids to construction.
- 1106. — In general.
- 1107. — Statements of court not part of sentence.
- 1108. — Other proceedings in case.
- 1109. — Statutes.

2. PUNISHMENT.

- 1115. In general.
- 1116. Imprisonment.
- 1117. — In general.
- 1118. — Duration.
Effect of credits against sentence, see V(D).
- 1119. — Commencement and termination.

350H. SENTENCING AND PUNISHMENT

V. SUFFICIENCY AND CONSTRUCTION OF SENTENCE IMPOSED.(Cont'd)

- 1120. Life imprisonment.
- 1121. Multiple counts or charges.
- 1122. — In general.
- 1123. — General sentences.
- 1124. Indeterminate term.
- 1125. — In general.
- 1126. — Minimum term.
- 1127. — Maximum term.
- 1128. Concurrent or consecutive terms.
- 1129. — In general.
- 1130. — Commencement of second or successive term.
- 1131. — Duration.
- 1132. Accommodation to sentence imposed in other proceeding.
- 1133. Place where sentence is to be served.
- 1134. Incidents of sentence.
- 1135. Fines.
- 1136. Restitution.
- 1137. Conflict in record.
- 1138. — In general.
- 1139. — Oral and written pronouncements.
- 1140. — Conflict with charging document.

(D) CREDITS.

Excludes credits against sentence imposed on revocation of probation, see ¶2041. Excludes credits against sentence imposed upon revocation of parole, see PARDON AND PAROLE. Excludes good conduct credits, see PRISONS.

- 1155. In general.
- 1156. Prior confinement.
- 1157. — In general.
- 1158. — Pretrial confinement.
- 1159. — Preconviction confinement.
- 1160. — Presentence confinement.
- 1161. — Confinement pending appeal or other review.
- 1162. — Confinement on invalid or erroneous sentence.
- 1163. — Confinement on conviction subsequently set aside or reversed.
- 1164. Release.
- 1165. — In general.
- 1166. — Bail or other bond or recognizance.
- 1167. — Probation or suspended sentence.
Credits upon revocation of probation, see ¶2041.
- 1168. — Parole.
Credits upon revocation of parole, see PARDON AND PAROLE ¶75, 76.

V. SUFFICIENCY AND CONSTRUCTION OF SENTENCE IMPOSED.(Cont'd)

- 1169. — Erroneous release.
- 1170. Home detention and similar status.
- 1171. Medical and psychological treatment or rehabilitation.
- 1172. Proceedings in different jurisdictions.
- 1173. — In general.
- 1174. — Different states.
- 1175. — State and federal sentences.
- 1176. Effect of escape or fugitive status.
- 1177. — In general.
- 1178. — Who is an escapee or fugitive.
- 1179. — Time served before escape.
- 1180. — Crime committed after escape.
- 1181. — Sentence for escape.
- 1182. — Proceedings in different jurisdictions.

VI. HABITUAL AND CAREER OFFENDERS.

Includes situations in which an accused is charged with being an habitual criminal or repeat offender, and a separate trial or hearing is had on the repeat offender issue or a specific finding on this issue is made in a unitary trial. Excludes prior offenses as among the circumstances considered in fixing the penalty, see I (In general), III (Sentence on multiple charges), IV (Guidelines), VIII (Death penalty), IX (Probation). See also DOUBLE JEOPARDY. Habitual or repeat traffic offenders, see AUTOMOBILES.

(A) IN GENERAL.

- 1200. In general.
- 1201. Power to punish.
- 1202. Repeat offenders defined.
- 1203. Purpose of repeat offender sentencing.
Purpose of statute, see ¶1209.
- 1204. Operation of repeat offender provisions.
- 1205. — In general.
- 1206. — Sentence enhancement distinguished from separate offense.
- 1207. Recidivist treatment as mandatory or discretionary.
- 1208. Constitutional, statutory, and regulatory provisions in general.
- 1209. Purpose of statute or regulatory provision.
- 1210. Validity of statute or regulatory provision.
Validity of retroactive operation, see ¶1215.
- 1211. Amendment.
Retroactive operation of amendment, see ¶1219.

350H. SENTENCING AND PUNISHMENT

**VI. HABITUAL AND CAREER
OFFENDERS.(Cont'd)**

- 1212. Repeal of statute or regulatory provision.
- 1213. Construction.
- 1214. Time of taking effect.
- 1215. Retroactive operation.
- 1216. — In general.
- 1217. — Application to offense committed before effective date.
- 1218. — Use for enhancement of offense or conviction occurring before effective date.
- 1219. — Amendment or revision of statute or regulation.

(B) OFFENSES SUBJECT TO ENHANCEMENT.

- 1230. In general.
- 1231. Grade or degree of offense.
- 1232. — In general.
- 1233. — Misdemeanors or petty offenses.
- 1234. — Felonies in general.
- 1235. Controlled substance offenses.
- 1236. Sex offenses.
- 1237. Weapons offenses.
- 1238. Other particular offenses.
- 1239. Actual or potential penalty.
- 1240. — In general.
- 1241. — Life imprisonment.
- 1242. — Capital offenses.
- 1243. Violent or nonviolent character of offense.
- 1244. — In general.
- 1245. — Particular offenses.

(C) OFFENSES USABLE FOR ENHANCEMENT.

1. IN GENERAL.

- 1250. In general.
- 1251. Actual or potential penalty.
- 1252. Grade or degree of offense.
- 1253. — In general.
- 1254. — Felony or misdemeanor in general.
- 1255. Particular offenses.
- 1256. — In general.
- 1257. — Controlled substance offenses.
- 1258. — Sex offenses.
- 1259. — Weapons offenses.
- 1260. — Other particular offenses.

**VI. HABITUAL AND CAREER
OFFENDERS.(Cont'd)**

- 1261. Violent or nonviolent character of offense.
- 1262. — In general.
- 1263. — Particular offenses.

2. OFFENSES IN OTHER JURISDICTIONS.

- 1270. In general.
- 1271. Criminal nature of conduct in general.
- 1272. Actual or potential penalty.
- 1273. Miscellaneous particular offenses.
- 1274. Grade or degree of offense.
- 1275. — In general.
- 1276. — Felony or misdemeanor in general.
- 1277. — Felony in other jurisdiction.
- 1278. — Felony in forum.
- 1279. — Equivalence or substantial similarity to felony in forum.
- 1280. — Offense not felony in other jurisdiction.
- 1281. — Offense not felony in forum.
- 1282. Conviction in foreign country.
- 1283. Violent or nonviolent character of offense.
- 1284. — In general.
- 1285. — Particular offenses.

**(D) CONVICTIONS AND DISPOSITIONS
USABLE FOR ENHANCEMENT.**

Effect of subsequent circumstances, see VI(I).

- 1286. In general.
- 1287. Intervention, diversion, and deferred adjudications.
- 1288. Commitment for treatment.
- 1289. Guilty and nolo contendere pleas.
- 1290. Military convictions and court-martials.
- 1291. Juvenile or youthful offender adjudications.
- 1292. Convictions or adjudications in other jurisdictions.

(E) TIME OF PRIOR OFFENSE OR CONVICTION.

- 1295. In general.
- 1296. Remoteness.
- 1297. Particular intervals.
- 1298. Computation.

350H. SENTENCING AND PUNISHMENT

(F) ORDER OF OFFENSES AND CONVICTIONS.

- 1299. In general.
- 1300. Order of convictions.
- 1301. Order of offenses.
- 1302. Necessity that predicate conviction precede offense.
- 1303. Matters related to sentencing.
- 1304. Other issues involving sequence.

(G) NUMBER OF PRIOR ADJUDICATIONS.

- 1305. In general.
- 1306. Number required.
- 1307. Convictions counted as separate.
- 1308. Scheme, plan or course of conduct.
- 1309. Contemporaneous convictions or sentences.

(H) DEFECTS IN PRIOR ADJUDICATION.

Effect of subsequent circumstances, see VI(I).

- 1310. In general.
- 1311. Challenge to prior adjudication in general.
- 1312. Constitutional objections in general.
- 1313. Grand jury and filing of accusatory instrument.
- 1314. Matters related to plea.
- 1315. Impaneling jury and jury waiver.
- 1316. Counsel in prior proceeding.
- 1317. — In general.
- 1318. — Absence or denial of counsel.
- 1319. — Conflict of interest.
- 1320. — Adequacy of representation.
- 1321. — Waiver of counsel and self-representation.
- 1322. Use of unlawfully obtained evidence.
- 1323. Conduct of trial.
- 1324. Order and judgment.
- 1325. Sentence and punishment.
- 1326. Other particular objections.
- 1327. Waiver and estoppel.
- 1328. Juvenile and youthful offender adjudications.

(I) SUBSEQUENT CIRCUMSTANCES AFFECTING PRIOR ADJUDICATION.

- 1330. In general.
- 1331. Pending proceedings.
- 1332. — In general.
- 1333. — Appeal.
- 1334. — Post-conviction proceeding.

VI. HABITUAL AND CAREER OFFENDERS.(Cont'd)

- 1335. — Habeas proceeding.
- 1336. Effect of change in law.
- 1337. Reclassification of offense.
- 1338. Matters related to sentence.
- 1339. Reversal or vacation.
- 1340. Parole.
- 1341. Expungement.
- 1342. Pardon or commutation of sentence.
- 1343. Restoration of civil rights.
- 1344. Other particular subsequent circumstances.

(J) DUAL USE.

- 1345. In general.
- 1346. Prior adjudication as element of current offense.
- 1347. — In general.
- 1348. — Escape.
- 1349. — Weapons offenses.
- 1350. — Other particular offenses.
- 1351. Prior adjudication determining grade or degree of current offense.
- 1352. Use of same prior adjudication to enhance different sentences.

(K) PROCEEDINGS.

- 1355. In general.
- 1356. Unitary or bifurcated trial.
- 1357. — In general.
- 1358. — Necessity and propriety of bifurcation.
- 1359. — Same judge.
- 1360. — Same jury.
- 1361. Notice of intent to seek enhancement.
- 1362. Premature disclosure of prior offense.
- 1363. Recidivist or habitual offender charge.
- 1364. — In general.
- 1365. — Necessity of special allegations or charges.
- 1366. — Time for filing or instituting proceedings.
- 1367. — Requisites and sufficiency of accusation.
- 1368. Objections to accusation in general.
- 1369. Striking, quashing, dismissing.
- 1370. Amendment of charge.
- 1371. Issues, proof and variance.
- 1372. Inquiry of or caution to defendant.

350H. SENTENCING AND PUNISHMENT

VI. HABITUAL AND CAREER OFFENDERS.(Cont'd)

- 1373. Plea or response to charge.
- 1374. Discovery and disclosure.
- 1375. Evidence.
- 1376. — In general.
- 1377. — Presumptions.
- 1378. — Burden of proof.
- 1379. — Admissibility.
 - (1). In general.
 - (2). Existence and eligibility of prior convictions.
 - (3). Identity.
 - (4). Declarations, admissions, and confessions.
 - (5). Other particular matters.
- 1380. — Degree of proof.
 - (1). In general.
 - (2). Existence and eligibility of prior conviction.
 - (3). Identity.
 - (4). Other particular matters.
- 1381. — Sufficiency.
 - (1). In general.
 - (2). Fact of prior conviction or adjudication.
 - (3). Nature or degree of predicate offense.
 - (4). Time and order of convictions or adjudications.
 - (5). Eligibility of prior conviction or adjudication.
 - (6). Identity.
 - (7). Other particular issues.
- 1382. Questions of law or fact.
- 1383. Hearing or trial.
- 1384. — In general.
- 1385. — Necessity.
- 1386. — Scope of inquiry.
- 1387. — Conduct.
- 1388. Instructions.
- 1389. Verdict or recommendation of jury.
- 1390. Findings and statement of reasons.
- 1391. — In general.
- 1392. — Necessity and purpose.
- 1393. — Sufficiency.
- 1394. Sentence imposed.
- 1395. — In general.
- 1396. — Form and requisites.

VI. HABITUAL AND CAREER OFFENDERS.(Cont'd)

- 1397. Decision, and order or judgment.
- 1398. Objections and disposition thereof.
- 1399. Reconsideration and modification of sentence.
 - Substantive matters relating to reconsideration, see*
 - ⇒1426.*

(L) PUNISHMENT.

- 1400. In general.
- 1401. Proportionality and excessiveness in general.
- 1402. Arson and malicious mischief.
- 1403. Assault and battery.
- 1404. Burglary and trespass.
- 1405. Conspiracy, racketeering, and money laundering.
- 1406. Counterfeiting and forgery.
- 1407. Disorderly conduct and breach of the peace.
- 1408. Drugs and narcotics.
- 1409. Escape.
- 1410. Extortion, threats, stalking, and harassment.
- 1411. False pretenses and fraud.
- 1412. Gambling offenses.
- 1413. Homicide, mayhem, and assault with intent to kill.
- 1414. Infants, offenses specific to.
 - Sex offenses, see ⇒1422.*
- 1415. Kidnapping and false imprisonment.
- 1416. Larceny, embezzlement, and receiving stolen property.
- 1417. Liquor offenses.
- 1418. Motor vehicle offenses.
 - Habitual or repeat traffic offenders, see AUTOMOBILES.*
- 1419. Obscenity and lewdness.
- 1420. Obstructing justice, bribery, perjury.
- 1421. Robbery.
- 1422. Sex offenses, incest, and prostitution.
- 1423. Tax and internal revenue offenses.
- 1424. Weapons and explosives.
- 1425. Other particular offenses.
- 1426. Reconsideration and modification.

VII. CRUEL AND UNUSUAL PUNISHMENT IN GENERAL.

Death penalty, see VIII, except for the conditions of confinement of prisoners awaiting execution, see ⇒1552.

350H. SENTENCING AND PUNISHMENT

(A) IN GENERAL.

- 1430. In general.
- 1431. Purpose of prohibition.
- 1432. Application to governmental or private action.
- 1433. Necessity of criminal conviction.
Due process restrictions on pretrial detention, see CONSTITUTIONAL LAW ¶4543.
- 1434. Scope of prohibition.
- 1435. — In general.
- 1436. — Punishment.
- 1437. — Intentional conduct.
- 1438. — Wantonness.
- 1439. — Cruelty and unnecessary infliction of pain.

(B) LAW ENFORCEMENT ACTIVITIES.

- 1440. In general.
- 1441. Investigative proceedings and surveillance.
- 1442. Arrest and stop.
- 1443. Searches and seizures.
- 1444. Other particular matters.

(C) CRIMINAL LIABILITY.

- 1450. In general.
- 1451. Declaring act criminal.
- 1452. — In general.
- 1453. — Particular offenses.
- 1454. Persons subject.
- 1455. Defenses.

(D) PROSECUTIONS.

- 1460. In general.
- 1461. Grand jury and filing of accusatory instrument.
- 1462. Summoning and impaneling trial jury.
- 1463. Conduct of trial.
- 1464. Arguments and conduct of counsel.
- 1465. Instructions.
- 1466. Sentencing proceedings.
Punishment, see VII(E).
- 1467. Appellate review.
- 1468. Post-conviction relief.
- 1469. Habeas corpus proceedings.

(E) EXCESSIVENESS AND PROPORTIONALITY OF SENTENCE.

- 1480. In general.
- 1481. Length of sentence.
- 1482. Proportionality.

VII. CRUEL AND UNUSUAL PUNISHMENT IN GENERAL.(Cont'd)

- 1483. Punishment authorized by statute.
- 1484. Arson and malicious mischief.
- 1485. Assault and battery.
Vehicular assault, see ¶1500.
- 1486. Burglary and trespass.
- 1487. Conspiracy, racketeering, and money laundering.
- 1488. Counterfeiting and forgery.
- 1489. Disorderly conduct and breach of the peace.
- 1490. Drugs and narcotics.
- 1491. Escape.
- 1492. Extortion, threats, stalking, and harassment.
- 1493. False pretenses and fraud.
- 1494. Gambling offenses.
- 1495. Homicide, mayhem, and assault with intent to kill.
Vehicular homicide, see ¶1500.
- 1496. Infants, offenses specific to.
Sex offenses, see ¶1504.
- 1497. Kidnapping and false imprisonment.
- 1498. Larceny, embezzlement, and receiving stolen property.
- 1499. Liquor offenses.
- 1500. Motor vehicle offenses.
- 1501. Obscenity and lewdness.
- 1502. Obstructing justice, bribery, and perjury.
- 1503. Robbery.
- 1504. Sex offenses, incest, and prostitution.
Sex offender registration and notification, see ¶1599.
- 1505. Tax and internal revenue offenses.
- 1506. Weapons and explosives.
- 1507. Other particular offenses.
- 1508. Cumulative or consecutive sentences.
- 1509. Enhanced punishment.
- 1510. — In general.
- 1511. — Firearms enhancements.
- 1512. — Other particular grounds for enhancement.
- 1513. Habitual offenders and career criminals.

(F) METHODS OF PUNISHMENT.

- 1519. In general.
- 1520. Barbarous and inhumane punishment.
- 1521. Cruelty.
- 1522. Torture.

350H. SENTENCING AND PUNISHMENT

VII. CRUEL AND UNUSUAL PUNISHMENT IN GENERAL. (Cont'd)

- 1523. Corporal punishment.
- 1524. — In general.
- 1525. — Particular punishments.
- 1526. Hard labor.

(G) CONFINEMENT.

- 1527. In general.
- 1528. Pretrial detention in general.
Due process restrictions, see CONSTITUTIONAL LAW ¶4543.
- 1529. Bail pending trial.
Excessive bail, see BAIL ¶52.
- 1530. Bail pending appeal or other review.
- 1531. Confinement beyond term of sentence.

(H) CONDITIONS OF CONFINEMENT.

Due process, see also CONSTITUTIONAL LAW ¶4820 *et seq.* *Equal protection, see also CONSTITUTIONAL LAW* ¶3822. *Maintenance and care of prisoners, see also PRISONS II. Prisoners, redress under civil rights acts, see CIVIL RIGHTS* ¶1089–1098, 1420, 1454, and 1485.

- 1532. In general.
- 1533. Deliberate indifference in general.
- 1534. Management and maintenance of security.
- 1535. Work and labor.
- 1536. Hazardous and unhealthful conditions.
- 1537. Protection from violence.
- 1538. Housing.
- 1539. Sanitation.
- 1540. Food.
- 1541. Recreation and exercise.
- 1542. Education, training and rehabilitation.
- 1543. Libraries, reading material, and censorship.
- 1544. Visitors and communication.
- 1545. Searches and privacy.
See also CONSTITUTIONAL LAW ¶1274, *PRISONS* ¶4(7).
- 1546. Medical care and treatment.
- 1547. Psychological and psychiatric treatment.
- 1548. Use of force.
- 1549. Physical restraints.
- 1550. Prison discipline.
See also PRISONS ¶13.
- 1551. Religious practices and materials.
See also CONSTITUTIONAL LAW ¶1421, *PRISONS* ¶4(14).
- 1552. Prisoners under sentence of death.

VII. CRUEL AND UNUSUAL PUNISHMENT IN GENERAL. (Cont'd)

- 1553. Segregated or solitary confinement.
- 1554. Other particular conditions.

(I) DEPRIVATION OF PROPERTY.

- 1555. In general.
- 1556. Restitution.
- 1557. — In general.
- 1558. — Proportionality.
- 1559. Fines.
- 1560. — In general.
- 1561. — Proportionality.
- 1562. Forfeitures.
- 1563. — In general.
- 1564. — Proportionality.
- 1565. Penalties.
- 1566. — In general.
- 1567. — Proportionality.
- 1568. Other deprivations.

(J) ALTERNATIVES TO INCARCERATION.

- 1570. In general.
- 1571. Intervention and diversion.
- 1572. Suspension of sentence.
- 1573. Probation.
- 1574. Parole.
- 1575. Pardon and clemency.
- 1576. Other particular programs.

(K) CIVIL MATTERS.

- 1580. In general.
- 1581. Civil disabilities arising from criminal conviction.
- 1582. Matters related to aliens.
- 1583. Administrative or non-judicial proceedings.
- 1584. — In general.
- 1585. — Matters related to licenses.
- 1586. Infants.
- 1587. — In general.
- 1588. — Termination of parental rights.
- 1589. Schools and school discipline.
- 1590. Chemical dependency.
- 1591. — In general.
- 1592. — Diagnosis and treatment.
- 1593. Mental health.
- 1594. — In general.

350H. SENTENCING AND PUNISHMENT

VII. CRUEL AND UNUSUAL PUNISHMENT IN GENERAL.(Cont'd)

- 1595. — Diagnosis, observation and treatment.
- 1596. — Civil commitment.
Includes treatment of persons civilly committed.
- 1597. — Persons incompetent to stand trial.
- 1598. Confinement after acquittal on ground of mental disorder.
- 1599. Registration of offenders.
Includes community notification.
- 1600. — In general.
- 1601. — Sex offenders.
- 1602. Awards of damages.

(L) JUVENILE JUSTICE.

- 1605. In general.
- 1606. Delinquency.
- 1607. Juvenile offenders.

VIII. THE DEATH PENALTY.

Reconsideration or modification of sentence, see XII. Allocation, see §355. Presence of defendant, see §340.

(A) IN GENERAL.

- 1610. In general.
- 1611. Constitutionality of death penalty.
Due process, see also CONSTITUTIONAL LAW §4741. Equal protection, see also CONSTITUTIONAL LAW §3811.
- 1612. Death penalty as cruel or unusual punishment.
- 1613. Requirements for imposition.
- 1614. — In general.
- 1615. — Individualized determination.
- 1616. — Avoidance of arbitrariness or capriciousness.
- 1617. — Existence of limit on sentencer's discretion.
- 1618. — Narrowing class of eligible offenders.
- 1619. — Objective standards.
- 1620. Existence and effect of racial or other discriminatory impact.
See also §1648.
- 1621. Purpose of statute or regulatory provision.
- 1622. Validity of statute or regulatory provision.
- 1623. — In general.

VIII. THE DEATH PENALTY.(Cont'd)

- 1624. — Provision authorizing death penalty.
- 1625. — Aggravating or mitigating circumstances.
- 1626. — Procedure.
- 1627. — Review.
- 1628. — Other particular provisions.
- 1629. Construction.
- 1630. Time of taking effect.
- 1631. Retroactive operation.
- 1632. — In general.
- 1633. — Effect of amendment or other modification.
- 1634. — Validity of particular retroactive applications.

(B) PERSONS ELIGIBLE.

- 1640. In general.
- 1641. Mentally ill or incompetent persons.
As aggravating or mitigating factor, see §1709.
- 1642. Mentally retarded persons.
As aggravating or mitigating factor, see §1713.
- 1643. Juveniles.
- 1644. Other particular classes of persons.

(C) FACTORS AFFECTING IMPOSITION IN GENERAL.

- 1645. In general.
- 1646. Sympathy and mercy.
- 1647. Passion or prejudice in general.
- 1648. Matters relating to racial or other prejudice.
Racial or other prejudice as motive for offense, see §1672.
- 1649. Exercise of rights.
- 1650. Deterrence.
- 1651. Retribution.
- 1652. Aggravating circumstances in general.
- 1653. Mitigating circumstances in general.
- 1654. Availability of other sentence.
- 1655. Sentence or disposition of co-participant or codefendant.
- 1656. Factors extrinsic to statute or guideline in general.
- 1657. Proportionality in general.
- 1658. Manner and effect of weighing or considering factors.
- 1659. Effect of applying invalid factor.
- 1660. Dual use of evidence or aggravating factor.

350H. SENTENCING AND PUNISHMENT

VIII. THE DEATH PENALTY.(Cont'd)

1661. Determinations based on multiple factors.

(D) FACTORS RELATED TO OFFENSE.

- 1665. In general.
- 1666. Nature or degree of offense.
- 1667. — In general.
- 1668. — Murder.
- 1669. Extent of offender's personal participation.
- 1670. Intent of offender.
- 1671. Motive.
- 1672. Racial or other prejudice as motive.
- 1673. Personal or pecuniary gain.
- 1674. Contract killing.
- 1675. Provocation or participation by victim.
- 1676. Planning, premeditation, and calculation.
- 1677. Compulsion and duress.
- 1678. Extreme or reckless indifference.
- 1679. Endangering or creating risk to others.
- 1680. Offense committed while in custody or legal restraint.
- 1681. Killing while committing other offense or in course of criminal conduct.
- 1682. Escape or other obstruction of justice.
- 1683. More than one killing in same transaction or scheme.
- 1684. Vileness, heinousness, or atrocity.
- 1685. Claim of innocence or residual doubt as to guilt.
- 1686. Other matters related to offense.

(E) FACTORS RELATED TO OFFENDER.

- 1700. In general.
- 1701. Gender.
- 1702. Offender's character in general.
- 1703. Other offenses, charges, misconduct.
- 1704. — In general.
- 1705. — Nature, degree, or seriousness of other offense.
- 1706. — Juvenile record.
- 1707. — Unadjudicated conduct.
- 1708. — Lack of significant prior record.
- 1709. Mental illness or disorder.
- 1710. Emotional distress or disturbance.
- 1711. Substance abuse and addiction.

VIII. THE DEATH PENALTY.(Cont'd)

- 1712. Intoxication or drug impairment at time of offense.
- 1713. Low intelligence or mental retardation.
- 1714. Age.
- 1715. Physical illness or disability.
- 1716. Childhood or familial background.
- 1717. Existing social ties and responsibilities.
- 1718. Remorse and actual or potential rehabilitation.
- 1719. Assistance to authorities and cooperation.
- 1720. Dangerousness.
- 1721. Other matters related to offender.

(F) FACTORS RELATED TO STATUS OF VICTIM.

- 1725. In general.
- 1726. Vulnerability.
- 1727. Age.
- 1728. Economic and social status.
- 1729. Public official or employee.
- 1730. — In general.
- 1731. — Law enforcement officer.
- 1732. — Correctional officers and prison employees.
- 1733. Witnesses.
- 1734. Victim's family status.
- 1735. Relationship between defendant and victim.

(G) PROCEEDINGS.

1. IN GENERAL.

- 1736. In general.
- 1737. Counsel.
- 1738. Decision to seek death penalty.
- 1739. — In general.
- 1740. — Authority or discretion of prosecutor.
- 1741. Notice of intent to seek death penalty.
- 1742. — In general.
- 1743. — Time for giving.
- 1744. Notice of sentencing factors.
- 1745. Notice of evidence and witnesses.
- 1746. Other discovery and disclosure.
- 1747. Failure to give notice or make disclosure.
- 1748. Preliminary objections and disposition thereof.

350H. SENTENCING AND PUNISHMENT

2. EVIDENCE.

- 1750. In general.
- 1751. Applicability of rules of evidence in general.
- 1752. Discretion of court.
- 1753. Presumptions.
- 1754. Burden of proof.
- 1755. Admissibility.
- 1756. — In general.
- 1757. — Evidence in mitigation in general.
- 1758. — Death penalty.
 - (1). In general.
 - (2). Discriminatory impact.
 - (3). Deterrent effect.
 - (4). Execution of death sentence.
- 1759. — Nature and circumstances of offense.
- 1760. — Defendant's character and conduct.
- 1761. — Defendant's mental condition or capacity.
- 1762. — Other offenses, charges, or misconduct.
- 1763. — Victim impact.
- 1764. — Demonstrative evidence.
- 1765. — Declarations and confessions.
- 1766. — Hearsay.
- 1767. — Documentary evidence.
- 1768. — Opinion evidence.
- 1769. — Expert evidence.
- 1770. — Wrongfully obtained evidence.
- 1771. Degree of proof.
- 1772. Sufficiency.
- 1773. Objections and disposition thereof.

3. HEARING.

- Presence of defendant, see II(G). Allocation, see II(G). Reconsideration or modification of sentence, see XII.*
- 1774. In general.
- 1775. Discretion of court.
- 1776. Scope of inquiry.
- 1777. Questions of law or fact.
- 1778. Purpose and necessity of bifurcated proceeding.
- 1779. Matters related to jury.
 - Constitutional right to have jury determine punishment, see JURY §24.*
 - (1). In general.
 - (2). Necessity for new jury.
 - (3). Deliberations.

VIII. THE DEATH PENALTY.(Cont'd)

- 1780. Conduct of hearing.
 - (1). In general.
 - (2). Arguments and conduct of counsel.
 - (3). Instructions.
- 1781. Remarks and conduct of judge.
- 1782. Reception of evidence.

4. DETERMINATION AND DISPOSITION.

- 1783. In general.
- 1784. Verdict or recommendation of jury.
 - (1). In general.
 - (2). Effect of recommendation.
 - (3). Overriding jury recommendation.
 - (4). Special issues.
- 1785. Findings and statement of reasons.
 - (1). In general.
 - (2). Necessity and purpose.
 - (3). Sufficiency.
- 1786. Unanimity.
- 1787. Decision, and order or judgment.
- 1788. Review of death sentence.
 - (1). In general.
 - (2). Right of review.
 - (3). Presentation and reservation in lower court of grounds of review.
 - (4). Proceedings in general.
 - (5). Scope of review.
 - (6). Proportionality.
 - (7). Presumptions.
 - (8). Discretion of lower court.
 - (9). Questions of fact.
 - (10). Harmless and reversible error.
 - (11). Determination and disposition.
- 1789. Review of proceedings to impose death sentence.
 - (1). In general.
 - (2). Right of review.
 - (3). Presentation and reservation in lower court of grounds of review.
 - (4). Proceedings in general.
 - (5). Scope of review.
 - (6). Presumptions.
 - (7). Discretion of lower court.
 - (8). Verdict and findings.
 - (9). Harmless and reversible error.

350H. SENTENCING AND PUNISHMENT

VIII. THE DEATH PENALTY.(Cont'd)

(10). Determination and disposition.

1790. Post-conviction relief.

5. MENTAL ILLNESS OR DISORDER.

1791. In general.

1792. Examination.

1793. Evidence.

1794. Hearing.

(H) EXECUTION OF SENTENCE OF DEATH.

1795. In general.

1796. Mode of execution.

1797. Proceedings at execution.

1798. Stay of execution.

1799. Setting new date for execution.

IX. PROBATION AND RELATED DISPOSITIONS.

Includes conditional liberty granted by judicial authority subsequent to conviction, and the revocation thereof. Includes habitual offenders and career criminals. Intervention, diversion, and withheld judgment, see X. Parole and commutation of sentence, see PARDON AND PAROLE. Bail and recognizance, see BAIL.

(A) IN GENERAL.

1800. In general.

1801. Authority to impose.

1802. Discretion of court.

1803. Suspension of sentence.

1804. — In general.

1805. — Suspending imposition of sentence.

1806. — Suspending execution of sentence.

Stay of execution of sentence, see II(J).

1807. — Partial suspension.

1808. — Indefinite suspension.

1809. — Effect of suspension.

1810. — Necessity that probation be granted.

1811. Nature and purpose of probation.

1812. Probation as right or privilege.

1813. Probation distinguished from similar dispositions.

1814. — In general.

1815. — Suspended sentence.

1816. — Intervention or diversion.

1817. — Community control.

1818. — Home confinement.

IX. PROBATION AND RELATED DISPOSITIONS.(Cont'd)

1819. — Parole.

1820. — Supervised release.

1821. Right to refuse probation or related disposition.

1822. Constitutional, statutory, and regulatory provisions.

1823. — In general.

1824. — Purpose.

1825. — Validity.

1826. — Repeal.

1827. — Construction.

1828. — Retroactive operation.

(B) GROUNDS AND CONSIDERATIONS IN GENERAL.

1830. In general.

1831. Interests of society or community.

1832. Protection and deterrence.

1833. Rehabilitation and reformation of offender.

1834. Other particular considerations.

(C) FACTORS RELATED TO OFFENSE.

1835. In general.

1836. Circumstances of offense in general.

1837. Actual or potential penalty in general.

1838. Nature, grade or seriousness of offense in general.

1839. Violent or nonviolent offenses in general.

1840. Armed conduct or use of weapon in general.

1841. Especially heinous, shocking or depraved offense.

1842. Arson and malicious mischief.

1843. Assault and battery.

Vehicular assault, see ¶1858.

1844. Burglary and trespass.

1845. Conspiracy, racketeering, and money laundering.

1846. Counterfeiting and forgery.

1847. Disorderly conduct and breach of the peace.

1848. Drugs and narcotics.

1849. Escape.

1850. Extortion, threats, stalking, and harassment.

1851. False pretenses and fraud.

350H. SENTENCING AND PUNISHMENT

IX. PROBATION AND RELATED DISPOSITIONS.(Cont'd)

- 1852. Gambling offenses.
- 1853. Homicide, mayhem, and assault with intent to kill.
Vehicular homicide, see 1858.
- 1854. Infants, offenses specific to.
Sex offenses, see 1862.
- 1855. Kidnapping and false imprisonment.
- 1856. Larceny, embezzlement, and receiving stolen property.
- 1857. Liquor offenses.
- 1858. Motor vehicle offenses.
- 1859. Obscenity and lewdness.
- 1860. Obstructing justice, bribery, and perjury.
- 1861. Robbery.
- 1862. Sex offenses, incest, and prostitution.
- 1863. Tax and internal revenue offenses.
- 1864. Weapons and explosives.
- 1865. Other particular offenses.

(D) FACTORS RELATED TO OFFENDER.

- 1870. In general.
- 1871. Lack of significant prior record; first offenders.
- 1872. Other arrests, charges or convictions.
 - (1). In general.
 - (2). Seriousness or degree of other charge.
 - (3). Particular charges or convictions.
- 1873. Habitual offenders and career criminals.
- 1874. Juvenile record.
- 1875. Age of offender.
- 1876. Physical condition of offender.
- 1877. Mental illness or incapacity.
- 1878. Substance abuse or addiction.
- 1879. Remorse.
- 1880. Restitution or reparation.
- 1881. Cooperation or assistance.
- 1882. Failure to cooperate.
- 1883. Exercise of rights.
- 1884. Perjury or other untruthfulness.
- 1885. Likelihood of rehabilitation or reoffending.
- 1886. Opinions and recommendations of officials and others.
- 1887. Plea bargain or other agreement.

IX. PROBATION AND RELATED DISPOSITIONS.(Cont'd)

- 1888. Other particular offender-related factors.

(E) PROCEEDINGS FOR IMPOSITION.

- 1890. In general.
- 1891. Petition or application.
- 1892. Time when probation may be granted.
- 1893. — In general.
- 1894. — Effect of commencement of sentence.
- 1895. Counsel.
- 1896. Evidence.
- 1897. — In general.
- 1898. — Presumptions.
- 1899. — Burden of proof.
- 1900. — Admissibility.
- 1901. — Degree of proof.
- 1902. — Sufficiency.
- 1903. Questions of law or fact.
- 1904. Hearing or trial.
- 1905. — In general.
- 1906. — Necessity.
- 1907. — Conduct of hearing.
- 1908. Findings.
- 1909. — In general.
- 1910. — Necessity and purpose.
- 1911. — Sufficiency.
- 1912. Decision or order.
- 1913. — In general.
- 1914. — Operation and effect.
- 1915. Imposition of conditions and obligations.
Substantive lawfulness of conditions, see IX(G).
- 1916. — In general.
- 1917. — Notice.
- 1918. — Announcement of and advice as to conditions.
- 1919. — Necessity of writing.
- 1920. — Failure to properly announce or memorialize.
- 1921. Conflict in record.
- 1922. Objections and exceptions.
- 1923. Reconsideration or modification.

(F) DISPOSITION OF OFFENDER.

- 1930. In general.
- 1931. Probation without sentence.

350H. SENTENCING AND PUNISHMENT

IX. PROBATION AND RELATED DISPOSITIONS.(Cont'd)

- 1932. Probation without suspension of sentence.
- 1933. Confinement and probation.
Confinement as condition of probation, see 1976.
- 1934. — In general.
- 1935. — Concurrent service.
- 1936. — Probation after confinement.
- 1937. — Different offenses or convictions.
- 1938. Consecutive or concurrent probationary terms.
- 1939. Commencement of probation.
- 1940. — In general.
- 1941. — Commencement after confinement.
- 1942. Duration.
- 1943. — In general.
- 1944. — Indefinite duration.
- 1945. — Relation to potential or actual term of confinement.
- 1946. — Effect of statute or guideline.
- 1947. — Interruption and tolling.
- 1948. Expiration of term.
- 1949. Modification of term.
- 1950. — In general.
- 1951. — Grounds.
- 1952. — Extent of modification.
- 1953. Discharge of probationer.

(G) CONDITIONS OF PROBATION.

Duration of probation, see IX(F).

- 1960. In general.
- 1961. Status of probationer in general.
- 1962. Discretion of court.
- 1963. Validity or reasonableness of conditions in general.
- 1964. Particular terms and conditions.
- 1965. — In general.
- 1966. — Good behavior; conformity to law.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1967. — Geographic or travel restrictions.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.

IX. PROBATION AND RELATED DISPOSITIONS.(Cont'd)

- 1968. — Banishment or deportation.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1969. — Reporting to and cooperation with law enforcement.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1970. — Waiver of constitutional rights.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1971. — Residence, association, and communication.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1972. — Employment and livelihood.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1973. — Restitution and reparations.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1974. — Payment of fine.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1975. — Payment of costs.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1976. — Imprisonment and confinement.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1977. — Rehabilitation and therapy.

350H. SENTENCING AND PUNISHMENT

IX. PROBATION AND RELATED DISPOSITIONS.(Cont'd)

- (1). In general.
- (2). Validity.
- (3). Construction, operation, and compliance.
- 1978. — Medical procedures and treatment.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1979. — Matters related to vehicles.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1980. — Intoxicants and controlled substances.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1981. — Matters related to weapons.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1982. — Community service.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1983. — Other particular conditions.
 - (1). In general.
 - (2). Validity.
 - (3). Construction, operation, and compliance.
- 1984. Modification of terms and conditions.
Procedure in connection with modification, see
⊞1923.
- 1985. — In general.
- 1986. — Grounds and considerations.
- 1987. — Particular cases.
- 1988. Supervision.

(H) SEARCHES AND SEIZURES.

- 1990. In general.
- 1991. Constitutional restrictions.
- 1992. — In general.

IX. PROBATION AND RELATED DISPOSITIONS.(Cont'd)

- 1993. — Necessity for warrant.
- 1994. — Matters relating to consent.
- 1995. Particular cases.
- 1996. Tests, samples, and specimens.

(I) REVOCATION.

1. IN GENERAL.

- 2000. In general.
- 2001. Discretion of court.

2. FACTORS AFFECTING REVOCATION.

- 2002. In general.
- 2003. Violation of probation condition.
- 2004. New offense.
- 2005. Other particular factors.
- 2006. Defenses and objections.

3. PROCEEDINGS.

- 2009. In general.
- 2010. Time for proceedings.
- 2011. Complaint or petition.
- 2012. Arrest or apprehension of probationer.
- 2013. Notice and disclosure.
- 2014. Assistance of counsel.
- 2015. Evidence.
- 2016. — In general.
- 2017. — Presumptions.
- 2018. — Burden of proof.
- 2019. — Admissibility.
- 2020. — Degree of proof.
- 2021. — Sufficiency.
- 2022. Questions of law or fact.
- 2023. Hearing.
- 2024. — In general.
- 2025. — Time for hearing.
- 2026. — Conduct of hearing.
- 2027. Findings of fact and conclusions of law.
- 2028. — In general.
- 2029. — Necessity and purpose.
- 2030. — Sufficiency.
- 2031. Reconsideration or rehearing.

4. DISPOSITION OF OFFENDER.

- 2032. In general.
- 2033. Matters considered.
- 2034. Enforcement of previously imposed sentence.

350H. SENTENCING AND PUNISHMENT

IX. PROBATION AND RELATED DISPOSITIONS.(Cont'd)

- 2035. Imposition of new sentence.
- 2036. Imposition of increased sentence.
- 2037. Sentence that could originally have been imposed.
- 2038. Sentence within statutory or other limitation for offense of conviction.
- 2039. Reimposition or reinstatement of probation.
- 2040. Conditions imposed.
- 2041. Credits and computation thereof.

X. ALTERNATIVE DISPOSITIONS.

Includes pretrial diversion and intervention. Includes withholding or deferring judgment after trial or finding of guilt. Probation and suspension of sentence, see IX. Bail and recognizance, see BAIL. Parole, see PARDON AND PAROLE. Commitment for treatment of addiction, see CHEMICAL DEPENDENTS. Commitment for treatment of mental disorders, see MENTAL HEALTH.

(A) IN GENERAL.

- 2045. In general.
- 2046. Banishment and deportation.
- 2047. Home confinement or detention.
- 2048. Employment and holding public office.
Ineligibility necessarily arising from criminal conviction, see PUBLIC EMPLOYMENT §129 and other particular topics.
- 2049. Community service.
- 2050. Intervention, diversion, and similar dispositions.
- 2051. — In general.
- 2052. — Authority to grant in general.
- 2053. — Role of prosecutor or other officer.
- 2054. — Role of court.
- 2055. Purpose of statute or regulatory provision.
- 2056. Validity of statute or regulatory provision.
- 2057. Retroactive operation.

(B) MATTERS AFFECTING ELIGIBILITY.

- 2058. In general.
- 2059. Actual or potential rehabilitation.
- 2060. Nature, degree, and seriousness of offense.
- 2061. — In general.
- 2062. — Domestic violence.
- 2063. — Drugs and narcotics.

X. ALTERNATIVE DISPOSITIONS.(Cont'd)

- 2064. — Motor vehicle offenses.
- 2065. — Other particular offenses.
- 2066. Other offenses, charges, or misconduct.
- 2067. Other particular matters.
- 2068. Agreement.

(C) PROCEEDINGS.

- 2070. In general.
- 2071. Time.
- 2072. Application or motion, and response.
- 2073. Advice and warnings.
- 2074. Discovery and disclosure.
- 2075. Evidence.
- 2076. Necessity for hearing.
- 2077. Conduct of hearing.
- 2078. Findings and statement of reasons.
- 2079. Effect of disposition.
Expungement of criminal records, see CRIMINAL LAW §1226.

(D) TERMS AND CONDITIONS.

- 2082. In general.
- 2083. Validity.
- 2084. Construction, operation, and compliance.
- 2085. Modification.

(E) TERMINATION.

- 2086. In general.
- 2087. Grounds.
- 2088. Proceedings.
- 2089. — In general.
- 2090. — Time.
- 2091. — Application or motion, and response.
- 2092. Evidence.
- 2093. Hearing.
- 2094. Effect of termination.
Expungement of criminal records, see CRIMINAL LAW §1226.

(F) DISCHARGE.

- 2095. In general.
- 2096. Satisfactory completion.

XI. RESTITUTION.

Payments into funds for crime victims, see COSTS. Restitution as condition of probation, see §1973. Restitution as condition of intervention or diversion, see X(D). Fines, see FINES and particular offenses.

350H. SENTENCING AND PUNISHMENT

(A) IN GENERAL.

- 2100. In general.
- 2101. Nature and purpose.
- 2102. Power to award.
- 2103. Discretion of court.
- 2104. Constitutional, statutory, and regulatory provisions.
- 2105. — In general.
- 2106. — Purpose.
- 2107. — Validity.
- 2108. — Repeal.
- 2109. — Construction.
- 2110. — Retroactive operation.

(B) PERSONS ENTITLED TO RESTITUTION.

- 2120. In general.
- 2121. Victims.
- 2122. Governmental entities.
- 2123. Insurers.
- 2124. Family of victim.
- 2125. Other third parties.

(C) FACTORS RELATED TO OFFENDER.

- 2130. In general.
- 2131. Necessity of conviction.
- 2132. Necessity that sentence be suspended.
- 2133. Offender's ability to pay.
- 2134. — In general.
- 2135. — Indigency.
- 2136. — Earning capacity.
- 2137. Other offender-related factors.
- 2138. Effect of plea bargain or other agreement.

(D) COMPENSABLE LOSSES.

- 2141. In general.
- 2142. Cause of loss in general.
- 2143. Nexus to offense of conviction.
- 2144. Several charges or counts.
- 2145. Other misconduct of offender.
- 2146. Scheme, pattern, or conspiracy.
- 2147. Extent of offender's personal participation.
- 2148. Monetary, pecuniary, or economic loss.
- 2149. Mental and emotional distress and suffering.
- 2150. Medical expenses.
- 2151. Psychological and psychiatric care and treatment.

XI. RESTITUTION.(Cont'd)

- 2152. Funeral expenses.
- 2153. Litigation expenses.
- 2154. Other particular matters.
- 2155. Mitigation.
- 2156. Speculative, uncertain, or unascertainable losses.
- 2157. Recovery or reimbursement as bar.
- 2158. — In general.
- 2159. — Payment by insurer.
See also 2177.

(E) AMOUNT.

- 2160. In general.
- 2161. Discretion of court.
- 2162. Considerations in fixing amount.
- 2163. — In general.
- 2164. — Factors related to offense.
- 2165. — Factors related to offender.
- 2166. — Factors related to victim.
- 2167. — Actual loss.
- 2168. — Other particular factors.
- 2169. Valuation of loss or injury.
- 2170. — In general.
- 2171. — Time for valuation.
- 2172. — Measure of valuation.
- 2173. Interest.
Rate of interest and computation of interest, see INTEREST.
- 2174. Credits and offsets.
- 2175. — In general.
- 2176. — Reimbursement.
- 2177. — Payment by insurer.
- 2178. Other particular amount-related matters.
- 2179. Effect of plea bargain or other agreement.

(F) PROCEEDINGS.

- 2180. In general.
- 2181. Notice.
- 2182. Evidence.
- 2183. — In general.
- 2184. — Presumptions.
- 2185. — Burden of proof.
- 2186. — Admissibility.
- 2187. — Degree of proof.
- 2188. — Sufficiency.
 - (1). In general.
 - (2). Loss or injury.

350H. SENTENCING AND PUNISHMENT

XI. RESTITUTION.(Cont'd)

- (3). Ability to pay.
- (4). Amount, value.
- (5). Other particular matters.
- 2189. Questions of law or fact.
- 2190. Hearing.
- 2191. — In general.
- 2192. — Necessity for hearing.
- 2193. — Time for hearing.
- 2194. — Conduct of hearing.
- 2195. Findings and statement of reasons.
- 2196. Order.
Payment plan or schedule, see Ⓒ2206.
- 2197. — In general.
- 2198. — Form and contents.
- 2199. — Definiteness and certainty.
- 2200. — Construction and operation.
- 2201. Objections and disposition thereof.

(G) PAYMENT.

- 2205. In general.
- 2206. Payment plan or schedule.
- 2207. Mode of payment.
- 2208. Payment by transfer of goods or specific articles.
- 2209. Time for payment.
- 2210. Disposition of proceeds.
- 2211. Recovery of payment made.
- 2212. Enforcement.
- 2213. — In general.
- 2214. — Who may enforce.
- 2215. — Time for enforcing.
- 2216. — Proceedings to enforce.
- 2217. — Mode of enforcement.

XII. RECONSIDERATION AND MODIFICATION OF SENTENCE.

Includes reconsideration, modification and correction of sentence by the sentencing court or by an authorized board, commission, or tribunal. Proceedings for relief from conviction or to vacate or set aside judgment of conviction, see CRIMINAL LAW. Amendment or correction of judgment, see CRIMINAL LAW. Proceedings for habeas corpus relief, see HABEAS CORPUS. Motion for new trial, see CRIMINAL LAW. Habitual offenders and career criminals, see Ⓒ1399, 1426. Reconsideration and modification of sentence imposing probation, see IX. Presentence report, see Ⓒ291.

(A) IN GENERAL.

- 2220. In general.
- 2221. Scope and purpose of remedy.
- 2222. Existence of other remedies.

XII. RECONSIDERATION AND MODIFICATION OF SENTENCE.(Cont'd)

- 2223. Waiver and estoppel.
- 2224. Sentences subject to reconsideration.
- 2225. — In general.
- 2226. — Severity or length of sentence.
- 2227. — Death sentence.
- 2228. Authority to reconsider or modify sentence.
- 2229. — In general.
- 2230. — Court that imposed sentence.
- 2231. — Specially designated court, panel or board.
- 2232. Discretion of court.
- 2233. Constitutional, statutory, and other regulatory provisions.
- 2234. — In general.
- 2235. — Purpose.
- 2236. — Validity.
- 2237. — Amendment.
- 2238. — Repeal.
- 2239. — Construction.
- 2240. — Time of taking effect.
- 2241. — Retroactive operation.

(B) GROUNDS AND CONSIDERATIONS.

- 2250. In general.
- 2251. Irregularity or error in sentencing proceedings.
- 2252. Technical, formal or arithmetical error.
- 2253. Conflict in record.
- 2254. Illegal sentence.
- 2255. Punishment unauthorized by statute or guideline.
- 2256. Excessive punishment.
- 2257. Unlawfully lenient disposition.
- 2258. Fraud.
- 2259. Matters arising after sentencing.
- 2260. — In general.
- 2261. — New information.
- 2262. — Change in law.
- 2263. — Change in facts.
- 2264. Matters related to plea.
- 2265. Death sentence.

(C) PROCEEDINGS.

1. IN GENERAL.

- 2270. In general.
- 2271. Jurisdiction.

350H. SENTENCING AND PUNISHMENT

XII. RECONSIDERATION AND MODIFICATION OF SENTENCE.(Cont'd)

- 2272. Persons entitled to seek relief.
- 2273. Counsel.
- 2274. Motion or application.
- 2275. — In general.
- 2276. — Necessity.
- 2277. — Sufficiency.
- 2278. Time.
- 2279. — In general.
- 2280. — Time for motion or application.
- 2281. — Term of court.
- 2282. — Execution or service of sentence.
- 2283. — Time for ruling or determination.
- 2284. — Computation.
- 2285. — Effect of delay.

2. EVIDENCE.

- 2286. In general.
- 2287. Applicability of rules of evidence in general.
- 2288. Discretion of court.
- 2289. Presumptions.
- 2290. Burden of proof.
- 2291. Admissibility.
- 2292. — In general.
- 2293. — Irregularity in sentencing proceeding.
- 2294. — Error in punishment imposed.
- 2295. — New information.
- 2296. — Matters related to plea.
- 2297. — Change in facts.
- 2298. — Competency.
 - (1). In general.
 - (2). Record and papers in underlying proceeding.
 - (3). Demonstrative evidence.
 - (4). Declarations.
 - (5). Hearsay.
 - (6). Documentary evidence.
 - (7). Opinion evidence.
 - (8). Expert evidence.
- 2299. Degree of proof.
- 2300. Sufficiency.
- 2301. Objections and disposition thereof.

3. HEARING AND DETERMINATION.

- 2302. In general.
- 2303. Questions of law or fact.

XII. RECONSIDERATION AND MODIFICATION OF SENTENCE.(Cont'd)

- 2304. Discretion of court.
- 2305. Necessity for hearing.
- 2306. Time for hearing.
- 2307. Presence of defendant.
- 2308. Allocution.
- 2309. Conduct of hearing.
- 2310. Findings and statement of reasons.
- 2311. — In general.
- 2312. — Necessity and purpose.
- 2313. — Sufficiency.
- 2314. Decision or order.
- 2315. — In general.
- 2316. — Operation and effect.
- 2317. Successive proceedings.
- 2318. Objections and disposition thereof.

(D) DISPOSITION.

- 2325. In general.
- 2326. Resolution of conflict in record.
- 2327. Correction of sentence.
- 2328. Reduction of sentence.
- 2329. Imposition of new sentence.
- 2330. Imposition of increased sentence.
- 2331. — In general.
- 2332. — What constitutes increase.
- 2333. Consecutive and concurrent sentences.
- 2334. Credits.
- 2335. Other dispositions.

351. SEQUESTRATION

SUBJECTS INCLUDED

Taking and keeping in legal custody specific property as subject to conflicting claims of ownership, or to liens or other special rights, to preserve it during litigation; or so taking and disposing of property of defendants in civil actions, to compel them to appear and answer or perform any other act therein, or to preserve the property, or to enforce performance of the judgment

Nature and scope of the remedy in general

352. SET-OFF AND COUNTERCLAIM

In what cases and for what purposes and as to what property it is allowed

Grounds of sequestration, and jurisdiction over and proceedings to obtain sequestration

Issuance, requisites and validity of writs and other mandates of sequestration

Appointment and qualification of sequestrators, and effect thereof

Rights, powers, duties, and liabilities of sequestrators, and proceedings by them

Dissolution of writs, etc., and discharge, etc., of sequestrators

Liabilities on and enforcement of securities given to obtain, dissolve, etc., sequestrations

Liabilities for wrongful procuring of sequestration

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Attachment of property in general, see CREDITORS' REMEDIES

Other remedies, sequestration merely incident to, see DIVORCE and other specific topics

Particular forms of relief, sequestration in actions for, see CORPORATIONS AND BUSINESS ORGANIZATIONS, MORTGAGES AND DEEDS OF TRUST, and other specific topics

Receiverships, see RECEIVERS

1. Nature and scope of remedy.
2. Statutory provisions.
3. Grounds and purposes.
4. — In general.
5. — Preservation of property in controversy or subject to liens or rights.
6. — Enforcing appearance or other proceeding.
7. — Enforcing performance of judgment or decree.
8. Defenses and grounds of opposition.
9. Persons entitled to sequestration.
10. Property which may be subject of sequestration.
11. Jurisdiction and authority to grant.
12. Proceedings to procure.
13. Writ, order, or other mandate.
14. Sequestrators.

15. Seizure, custody, and disposition of property.

16. Proceedings to support or enforce.

17. Dissolution or discharge.

18. Claims by third persons.

19. Return of writ.

20. Liabilities on bonds.

21. Wrongful sequestration.

352. SET-OFF AND COUNTERCLAIM

SUBJECTS INCLUDED

Cross-demands and claims as grounds of defense to actions or of cross-actions

What debts or damages constitute grounds thereof, whether liquidated or unliquidated, and whether connected with or independent of the principal cause of action

Between what parties and in what actions such cross-demands and claims are available

Their operation and effect by way of recoupment or other reduction of the demand or claim sued on, or to counterbalance a recovery thereon, or as ground for affirmative relief

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Compulsory counterclaims—

In federal courts, see FEDERAL CIVIL PROCEDURE

Judgment, effect on conclusiveness of, see JUDGMENT

Equity, cross-bills in, see EQUITY

Judgments on counterclaims, see JUDGMENT

Particular transactions or forms of demand or liability, rights peculiar to, see BILLS AND NOTES, INTEREST, COSTS, JUDGMENT, and other specific topics

Pleading set-offs, counterclaims, etc., and replies to counterclaims, see PLEADING

Proceedings other than actions, set-off in, see BANKRUPTCY, CREDITORS' REMEDIES, and other specific topics

352. SET-OFF AND COUNTERCLAIM

I. NATURE AND GROUNDS OF REMEDY, ¶¶1-21.

II. SUBJECT-MATTER, ¶¶22-54.

III. OPERATION AND EFFECT, ¶¶55-61.

I. NATURE AND GROUNDS OF REMEDY.

1. Nature and purpose in general.
2. What law governs.
3. Statutory provisions.
4. Grounds and scope of remedy.
5. — In general.
6. — Recoupment or reconvention.
7. — Statutory set-off.
8. — Equitable set-off.
 - (1). In general.
 - (2). Insolvency and nonresidence.
9. — Counterclaim.
10. — Cross-action.
11. Existence of cause of action of plaintiff.
12. Actions in which remedy is available.
13. — In general.
14. — On contracts.
15. — For torts.
16. — On demands not liquidated.
18. Set-off or counterclaim against set-off or counterclaim.
19. Courts in which remedy is available.
20. Agreements to allow set-off.
21. Estoppel, waiver, or relinquishment.

II. SUBJECT-MATTER.

22. Nature of indebtedness or liability in general.
 - (1). In general.
 - (2). Damages arising from torts.
23. Tendency to diminish or defeat plaintiff's recovery.
24. Subsisting right of action of defendant.
25. Claims arising out of same contract or transaction or connected with subject of action.
26. — In general.
27. — Recoupment or reconvention.
 - (1). In general.
 - (2). Recoupment for plaintiff's breach or nonperformance of contract sued on.
28. — Set-off.
 - (1). In general.

II. SUBJECT-MATTER.(Cont'd)

- (2). Set-off for plaintiff's breach of contract sued on.
29. — Counterclaim.
 - (1). In general.
 - (2). Actions and counterclaims relating to specific property.
 - (3). In actions for torts.
30. Causes of action on other and distinct contracts or transactions.
31. — In general.
32. — Recoupment.
33. — Set-off.
 - (1). In general.
 - (2). Equitable set-off.
34. — Counterclaim.
 - (1). In general.
 - (2). Torts in general.
 - (3). Distinct torts.
35. Demands not liquidated.
 - (1). In general.
 - (2). Demands disconnected with cause of action sued on.
36. Demands not matured.
37. Contingent claims.
38. Secured claims.
39. Claims on which action is pending.
40. Claims arising after commencement of action.
41. Parties to and mutuality of cross-demands in general.
42. Demands of one or more codefendants as to whom separate judgment may be had.
- 42.5. Demands against codefendants.
43. Joint and separate claims and liabilities.
44. — In general.
 - (1). In general.
 - (2). Partnership and individual demands.
45. — Survivorship.
46. Claims and liabilities in different rights and capacities in general.
 - (1). In general.
 - (2). Executors and administrators.
47. Claims and liabilities of nominal parties and real parties in interest.
48. Set-offs and counterclaims against assigned causes of action.
49. — In general.

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II. SUBJECT-MATTER.(Cont'd)

- (1). In general.
 - (2). Necessity of notice of assignment.
 - (3). Causes of action on other and distinct contracts or transactions.
 - (4). Set-off against intermediate assignee.
50. — Demands arising or maturing after assignment or notice thereof.
51. Assigned claims as set-offs and counterclaims.
52. — In general.
- (1). In general.
 - (2). Assigned claim as set-off against assigned cause of action.
53. — Demands arising or acquired after commencement of action.
54. Waiver of objections.

III. OPERATION AND EFFECT.

55. Compensation between cross-demands in general.
56. Admission of plaintiff's cause of action.
57. Reduction of plaintiff's recovery.
58. Extinguishment of plaintiff's cause of action.
59. Right to judgment for excess over plaintiff's cause of action.
60. Effect of failure to assert or claim; compulsory counterclaim.
61. Withdrawal and effect thereof.

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SUBJECTS INCLUDED

Rape and sexual assault; more particularly—

Sexual intercourse without consent; or where consent is extorted by fear, obtained by fraud, or otherwise compelled; or with a person who either is in fact or is deemed in law incapable of such consent

Assault, battery, abuse, or other unwanted physical contact of a sexual nature

Sodomy and deviate sexual conduct; more particularly—

Oral or anal copulation between human beings

Copulation between a human being and an animal

Attempts and assaults with intent to commit such acts, and aiding therein

Solicitation of sodomy or deviate sexual conduct, other than by prostitution

Nature and elements of these offenses

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Abduction, offense of, see CRIMINAL LAW ¶45.10

Adultery, offense of, see ADULTERY

Assault, battery, abuse, or other unwanted physical contact of a nonsexual nature, see ASSAULT AND BATTERY

Bigamy, offense of, see BIGAMY

Children, sex offenses against, see also INFANTS XII(C)

Civil liability, see ASSAULT AND BATTERY I

Domestic violence, see ASSAULT AND BATTERY

Fornication, offense of, see CRIMINAL LAW ¶45.40

Harassment short of physical contact, see CIVIL RIGHTS, THREATS, STALKING, AND HARASSMENT, and TORTS V

Incest, offense of, see INCEST

Indecent exposure, offense of, see OBSCENITY

Lewdness, offenses concerning, see OBSCENITY

Miscegenation, offense of, see CRIMINAL LAW ¶45.45

Obscenity, offenses concerning, see OBSCENITY

Prostitution, offenses concerning, see DISORDERLY HOUSE, PROSTITUTION

Restraining and protective orders, see PROTECTION OF ENDANGERED PERSONS

Seduction, offense of, see SEDUCTION

Sex offenders, commitment and registration of, see MENTAL HEALTH ¶452

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Sex trafficking, offense of, see PROSTITUTION

Solicitation of—

Children for immoral purposes, see INFANTS ¶1591

Prostitution, see PROSTITUTION ¶16

Stalking, offense of, see THREATS, STALKING, AND HARASSMENT

I. IN GENERAL, ¶1-10.

II. NATURE AND ELEMENTS OF OFFENSES, ¶11-110.

(A) IN GENERAL, ¶11-90.

(B) INCHOATE OFFENSES, ¶91-110.

III. DEFENSES, ¶111-130.

IV. PARTIES TO OFFENSES, ¶131-140.

V. INDICTMENT, INFORMATION, PRESENTMENT, OR COMPLAINT, ¶141-170.

VI. EVIDENCE, ¶171-320.

(A) IN GENERAL, ¶171-180.

(B) PRESUMPTIONS, INFERENCES, AND BURDEN OF PROOF, ¶181-200.

(C) ADMISSIBILITY IN GENERAL, ¶201-220.

(D) ADMISSIBILITY OF VICTIM'S SEXUAL HISTORY; RAPE SHIELD, ¶221-240.

(E) ADMISSIBILITY OF VICTIM'S COMPLAINTS, STATEMENTS, AND DECLARATIONS, ¶241-250.

(F) WEIGHT AND SUFFICIENCY, ¶251-320.

1. IN GENERAL, ¶251-300.

2. CORROBORATION OF VICTIM, ¶301-320.

VII. TRIAL, ¶321-430.

(A) IN GENERAL, ¶321-330.

(B) QUESTIONS OF LAW OR FACT, ¶331-380.

(C) INSTRUCTIONS, ¶381-430.

VIII. SENTENCE AND PUNISHMENT, ¶431-439.

I. IN GENERAL.

1. In general.
2. Constitutional and statutory provisions.
3. — In general.
4. — Purpose and construction in general.
 - (1). In general.
 - (2). Victim's sexual history; rape shield.

I. IN GENERAL.(Cont'd)

5. — Validity.

- (1). In general.
- (2). Sodomy and deviate sexual conduct in general.
- (3). Same-sex conduct; homosexuality.
- (4). Public or private conduct.
- (5). Consensual conduct.
- (6). Solicitation of sodomy or deviate sexual conduct.
- (7). Sex offenses against minors.
See also INFANTS.
- (8). Condition or status of victim; relationship to accused.
- (9). Victim's sexual history; rape shield.
- (10). Sentence and punishment.

6. — Retroactive or prospective operation.
7. Prosecutions and proceedings in general.

II. NATURE AND ELEMENTS OF OFFENSES.

(A) IN GENERAL.

11. In general.
12. Sexual assault, battery, or abuse in general.
13. Rape in general.
14. Sodomy and deviate sexual conduct in general.
15. Degrees and aggravated sex offenses in general.
16. Sex offenses against minors in general.
See also INFANTS.
17. Nature and extent of acts supporting offense.
18. — In general.
19. — Same-sex conduct; homosexuality.
Gender of accused, see ¶26. Gender of victim, see ¶31.
20. — Public or private conduct.
21. — Bodily contact; penetration.
 - (1). In general.
 - (2). Oral.
 - (3). Anal.
 - (4). Digital.
 - (5). Object, weapon, or device.
22. — Emission or ejaculation.
23. Condition or status of accused.
24. — In general.
25. — Physical capacity.
Physical incapacity as defense, see ¶112. Insanity, see CRIMINAL LAW ¶47. Intoxication, see CRIMINAL LAW ¶52.

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II. NATURE AND ELEMENTS
OF OFFENSES.(Cont'd)

26. — Gender of accused.
Same-sex conduct and homosexuality, see ¶19.
27. Condition or status of victim.
28. — In general.
29. — Mental condition or status.
30. — Unconscious or intoxicated victim.
31. — Gender of victim.
Same-sex conduct and homosexuality, see ¶19.
32. — Live or dead victim; necrophilia.
33. — Animal victim; bestiality.
34. Age.
See also INFANTS.
35. — In general.
36. — Elderly victim; old age.
37. — Age of accused.
38. — Relative ages of victim and accused.
39. Relationship of accused to victim.
Incest, see INCEST.
40. — In general.
41. — Marriage and cohabitation.
42. — Prostitution; payment.
Offense of prostitution, see PROSTITUTION.
43. — Position of trust or authority.
44. — Clergy.
45. — Physicians and health-care workers.
See also ¶120.
46. Victim's sexual history.
As defense, see ¶121. Rape shield statutes, see VI(D).
47. Intent or knowledge.
Mistake of fact, see ¶116.
48. — In general.
49. — General or specific intent.
50. — Knowledge of victim's condition or status.
51. — Knowledge of victim's age.
(1). In general.
(2). Constructive knowledge.
52. — Sexual gratification.
53. — Malice.
54. Consent.
Consent as defense, see ¶113. Mistake of fact, see ¶116.
55. — In general.
56. — Sodomy and deviate sexual conduct in general.
57. — What constitutes consent in general.
58. — Knowledge of consent or of non-consent; communication.
59. — Implied consent.

II. NATURE AND ELEMENTS
OF OFFENSES.(Cont'd)

- (1). In general.
- (2). Marriage and cohabitation.
- (3). Prostitution; payment.
Offense of prostitution, see PROSTITUTION.
60. — Misrepresentation or deception.
61. — Fear or intimidation.
62. — Capacity to consent.
(1). In general.
(2). Intoxication.
(3). Age.
See also INFANTS.
63. — Scope of consent.
64. — Withdrawal of consent.
65. Force or coercion.
66. — In general.
67. — Threats, fear, and intimidation.
68. — Physical force or violence.
69. — Weapons.
70. Resistance.
71. — In general.
72. — Necessity.
73. — Sufficiency.
74. Injury or harm.
75. — In general.
76. — Necessity.
77. — Sufficiency; severity.
78. — Transmission of disease.
79. — Mental or psychological injury.
80. Continuing or repeated conduct.
- (B) INCHOATE OFFENSES.
Abandonment as defense, see ¶122.
91. In general.
92. Attempt.
93. — In general.
94. — Intent.
95. — Overt act; substantial step.
96. — Condition or status of victim.
97. Assault with intent to commit sex offense.
98. — In general.
99. — Intent.
100. — Consent.
(1). In general.
(2). Age.
See also INFANTS.
101. Solicitation of sodomy or deviate sexual conduct.
Solicitation of children for immoral purposes, see INFANTS ¶1591. Solicitation of prostitution, see PROSTITUTION ¶16.

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III. DEFENSES.

- 111. In general.
- 112. Physical incapacity.
Physical capacity as element of offense, see §25.
Insanity, see CRIMINAL LAW §47. Intoxication, see CRIMINAL LAW §52.
- 113. Consent.
As element of offense, see §54, II(B).
- 114. — In general.
- 115. — Sodomy; deviate sexual conduct.
- 116. Mistake of fact.
Intent, knowledge, and consent as elements of offense, see §47, 54, II(B).
- 117. — In general.
- 118. — Consent.
- 119. — Age.
See also INFANTS.
- 120. Contact for purposes of medical treatment.
See also §45.
- 121. Victim's sexual history.
As element of offense, see §46. Rape shield statutes, see VI(D).
- 122. Abandonment.

IV. PARTIES TO OFFENSES.

- 131. In general.
- 132. Nature and extent of participation in general.
- 133. — In general.
- 134. — Sodomy; deviate sexual conduct.
- 135. Principals, accessories, and accomplices.
- 136. Aiding and abetting.

V. INDICTMENT, INFORMATION, PRESENTMENT, OR COMPLAINT.

- 141. In general.
- 142. Requisites and sufficiency in general.
- 143. — In general.
- 144. — Sexual assault, battery, or abuse.
- 145. — Rape.
- 146. — Sodomy; deviate sexual conduct.
- 147. — Degrees; aggravated sex offenses.
- 148. — Sex offenses against minors.
See also INFANTS.
- 149. Nature and extent of acts supporting offense.
- 150. — In general.
- 151. — Bodily contact; penetration.

V. INDICTMENT, INFORMATION, PRESENTMENT, OR COMPLAINT.(Cont'd)

- 152. Condition or status of accused.
- 153. Condition or status of victim.
- 154. Age.
See also INFANTS.
- 155. Relationship of accused to victim.
- 156. Victim's sexual history.
- 157. Intent or knowledge.
- 158. Consent.
- 159. Force or coercion; resistance.
- 160. Injury or harm.
- 161. Continuing or repeated conduct.
- 162. Attempt.
- 163. Assault with intent to commit sex offense.
- 164. Solicitation of sodomy or deviate sexual conduct.
- 165. Variance between allegations and proof.

VI. EVIDENCE.

(A) IN GENERAL.

- 171. In general.

(B) PRESUMPTIONS, INFERENCES, AND BURDEN OF PROOF.

- 181. In general.
- 182. Nature and extent of acts supporting offense.
- 183. — In general.
- 184. — Bodily contact; penetration.
- 185. Condition or status of accused.
- 186. Condition or status of victim.
- 187. Age.
See also INFANTS.
- 188. Relationship of accused to victim.
- 189. Victim's sexual history.
- 190. Intent or knowledge.
- 191. Consent.
- 192. Force or coercion; resistance.
- 193. Injury or harm.
- 194. Continuing or repeated conduct.
- 195. Attempt.
- 196. Assault with intent to commit sex offense.
- 197. Solicitation of sodomy or deviate sexual conduct.

(C) ADMISSIBILITY IN GENERAL.

- 201. In general.

352H. SEX OFFENSES

VI. EVIDENCE.(Cont'd)

- 202. Nature and extent of acts supporting offense.
- 203. — In general.
- 204. — Bodily contact; penetration.
- 205. Condition or status of accused.
- 206. Identity of accused.
- 207. Condition or status of victim.
- 208. — In general.
- 209. — Subsequent to offense.
- 210. Age.
See also INFANTS.
- 211. Relationship of accused to victim.
- 212. Intent or knowledge.
- 213. Consent.
- 214. Force or coercion; resistance.
- 215. Injury or harm.
- 216. Continuing or repeated conduct.
- 217. Character and habits of accused.
See also CRIMINAL LAW XVII(G).
- 218. Character and conduct of victim in general.
See also CRIMINAL LAW 338(6).

(D) ADMISSIBILITY OF VICTIM'S SEXUAL HISTORY; RAPE SHIELD.

See also 46, 121.

- 221. In general.
- 222. Discretion in general.
- 223. Purposes for admitting in general.
- 224. — In general.
- 225. — Consent.
- 226. Probative value and prejudicial effect in general.
- 227. Particular matters.
- 228. — In general.
- 229. — Reputation.
See also WITNESSES 340(3).
- 230. — Prior accusations by victim.
- 231. — Prior conduct involving accused.
- 232. — Prior conduct involving persons other than accused.
- 233. — Subsequent conduct.
- 234. — Minor victims.
See also INFANTS.
- 235. Proceedings concerning admissibility.
See also CRIMINAL LAW XX(D).
- 236. — In general.
- 237. — Motion; notice.
- 238. — Preliminary evidence.
- 239. — Hearing and determination.

(E) ADMISSIBILITY OF VICTIM'S COMPLAINTS, STATEMENTS, AND DECLARATIONS.

- 241. In general.
- 242. Fresh or prompt complaint; outcry.
- 243. What constitutes fresh or prompt complaint.
- 244. Multiple complaints.
- 245. Scope of testimony; details.
- 246. Constancy of accusation.
- 247. Corroboration.
- 248. Failure to complain.
- 249. Delay in complaining.

(F) WEIGHT AND SUFFICIENCY.

1. IN GENERAL.

- 251. In general.
- 252. Sexual assault, battery, or abuse in general.
- 253. Rape in general.
- 254. Sodomy and deviate sexual conduct in general.
- 255. Degrees and aggravated sex offenses in general.
- 256. Sex offenses against minors in general.
See also INFANTS.
- 257. Nature and extent of acts supporting offense.
- 258. — In general.
- 259. — Bodily contact; penetration.
- 260. Condition or status of accused.
- 261. Identity of accused.
- 262. Condition or status of victim.
- 263. Age.
See also INFANTS.
- 264. Relationship of accused to victim.
- 265. Victim's sexual history.
- 266. Intent or knowledge.
- 267. — In general.
- 268. — Knowledge of victim's condition or status.
- 269. — Knowledge of victim's age.
See also INFANTS.
- 270. — Sexual gratification.
- 271. Consent.
- 272. — In general.
- 273. — Capacity to consent.
- 274. Force or coercion.
- 275. — In general.
- 276. — Threats, fear, and intimidation.
- 277. — Weapons.

352H. SEX OFFENSES

VI. EVIDENCE.(Cont'd)

- 278. Resistance.
- 279. Injury or harm.
- 280. Continuing or repeated conduct.
- 281. Attempt.
- 282. — In general.
- 283. — Intent.
- 284. — Substantial step; overt act.
- 285. — Condition or status of victim.
- 286. Assault with intent to commit sex offense.
- 287. — In general.
- 288. — Intent.
- 289. — Consent.
- 290. Solicitation of sodomy or deviate sexual conduct.
- 291. Defenses.
- 292. — In general.
- 293. — Mistake of fact.
- 294. Parties to offenses; aiding and abetting.

2. CORROBORATION OF VICTIM.

- 301. In general.
- 302. Necessity.
- 303. — In general.
- 304. — Sex offenses against minors.
See also INFANTS.
- 305. — Attempt.
- 306. — Assault with intent to commit sex offense.
- 307. Sufficiency.
- 308. — In general.
- 309. — Sex offenses against minors.
See also INFANTS.
- 310. — Attempt.
- 311. — Assault with intent to commit sex offense.
- 312. Failure to complain or delay in complaining.

VII. TRIAL.

(A) IN GENERAL.

- 321. In general.
- 322. Verdict and findings.

(B) QUESTIONS OF LAW OR FACT.

- 331. In general.
- 332. Sexual assault, battery, or abuse in general.

VII. TRIAL.(Cont'd)

- 333. Rape in general.
- 334. Sodomy and deviate sexual conduct in general.
- 335. Degrees and aggravated sex offenses in general.
- 336. Sex offenses against minors in general.
See also INFANTS.
- 337. Nature and extent of acts supporting offense.
- 338. — In general.
- 339. — Bodily contact; penetration.
- 340. Condition or status of accused.
- 341. Identity of accused.
- 342. Condition or status of victim.
- 343. Age.
See also INFANTS.
- 344. Relationship of accused to victim.
- 345. Victim's sexual history.
- 346. Intent or knowledge.
- 347. Consent.
- 348. — In general.
- 349. — Capacity to consent.
- 350. Force or coercion.
- 351. — In general.
- 352. — Threats, fear, and intimidation.
- 353. — Weapons.
- 354. Resistance.
- 355. Injury or harm.
- 356. Continuing or repeated conduct.
- 357. Attempt.
- 358. — In general.
- 359. — Intent.
- 360. — Overt act; substantial step.
- 361. — Condition or status of victim.
- 362. Assault with intent to commit sex offense.
- 363. — In general.
- 364. — Intent.
- 365. — Consent.
- 366. Solicitation of sodomy or deviate sexual conduct.
- 367. Defenses.
- 368. — In general.
- 369. — Mistake of fact.
- 370. Parties to offenses; aiding and abetting.
- 371. Corroboration of victim.

(C) INSTRUCTIONS.

- 381. In general.

353. SHERIFFS AND CONSTABLES

VII. TRIAL.(Cont'd)

- 382. Sexual assault, battery, or abuse in general.
- 383. Rape in general.
- 384. Sodomy and deviate sexual conduct in general.
- 385. Degrees and aggravated sex offenses in general.
Included offenses, see CRIMINAL LAW §795(2.80).
- 386. Sex offenses against minors in general.
See also INFANTS.
- 387. Nature and extent of acts supporting offense.
- 388. — In general.
- 389. — Bodily contact; penetration.
- 390. Condition or status of accused.
- 391. Identity of accused.
- 392. Condition or status of victim.
- 393. Age.
See also INFANTS.
- 394. Relationship of accused to victim.
- 395. Victim's sexual history.
- 396. Intent or knowledge.
- 397. Consent.
- 398. — In general.
- 399. — Capacity to consent.
- 400. Force or coercion.
- 401. — In general.
- 402. — Threats, fear, and intimidation.
- 403. — Weapons.
- 404. Resistance.
- 405. Injury or harm.
- 406. Continuing or repeated conduct.
- 407. Attempt.
Included offenses, see CRIMINAL LAW §795(2.85).
- 408. — In general.
- 409. — Intent.
- 410. — Overt act; substantial step.
- 411. — Condition or status of victim.
- 412. Assault with intent to commit sex offense.
- 413. — In general.
- 414. — Intent.
- 415. — Consent.
- 416. Solicitation of sodomy or deviate sexual conduct.
- 417. Defenses.
- 418. — In general.
- 419. — Mistake of fact.

VII. TRIAL.(Cont'd)

- 420. Parties to offenses; aiding and abetting.
- 421. Corroboration of victim.

VIII. SENTENCE AND PUNISHMENT.

- 431. In general.
- 432. Sexual assault, battery, or abuse.
- 433. Rape.
- 434. Sodomy; deviate sexual conduct.
- 435. Degrees; aggravated sex offenses.
- 436. Sex offenses against minors.
See also INFANTS.
- 437. Attempt.
- 438. Assault with intent to commit sex offense.
- 439. Solicitation of sodomy or deviate sexual conduct.

353. SHERIFFS AND CONSTABLES

SUBJECTS INCLUDED

The chief executive officers of counties, and inferior officers authorized to perform the functions of peace officers within their counties or territorial subdivisions thereof

Eligibility for the office, appointment, qualification and tenure of office

Rights, powers, duties, and liabilities of such officers, their deputies, assistants, and substitutes in general

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Bailiffs and similar court officials, see COURTS

Election of sheriffs or constables by popular vote, see ELECTION LAW

Marshals and police officers of incorporated cities, towns, etc., see MUNICIPAL CORPORATIONS

Particular writs, warrants, etc., mode of service and return, see PROCESS, CREDITORS' REMEDIES, and other specific topics

353. SHERIFFS AND CONSTABLES

Specific duties and functions, performance of, see ARREST, CREDITORS' REMEDIES, PRISONS, and other specific topics

I. APPOINTMENT, QUALIFICATION, AND TENURE, ¶1-27.

(A) SHERIFFS, ¶1-7.

(B) CONSTABLES, ¶8-14.

(C) DEPUTIES AND ASSISTANTS, SUBSTITUTES, AND SPECIAL OFFICERS, ¶15-27.

II. COMPENSATION, ¶28-76.

III. POWERS, DUTIES, AND LIABILITIES, ¶77-153.

IV. LIABILITIES ON OFFICIAL BONDS, ¶154-171.

I. APPOINTMENT, QUALIFICATION, AND TENURE.

(A) SHERIFFS.

1. Nature and existence of office.
2. Appointment or election.
3. Eligibility and qualification.
4. De facto sheriffs.
5. Term of office, vacancies, and holding over.
6. Resignation, suspension, or removal.
7. Title to and possession of office.

(B) CONSTABLES.

8. Nature and existence of office.
9. Appointment or election.
10. Eligibility and qualification.
11. De facto constables.
12. Term of office, vacancies, and holding over.
13. Resignation, suspension, or removal.
14. Title to and possession of office.

(C) DEPUTIES AND ASSISTANTS, SUBSTITUTES, AND SPECIAL OFFICERS.

15. Undersheriffs.
16. Deputies and delegation of powers.
17. — In general.
18. — Appointment.
19. — Eligibility and qualification.
20. — De facto deputies.
21. — Term and tenure of office.
22. — Special deputies and persons specially authorized.

I. APPOINTMENT, QUALIFICATION, AND TENURE.(Cont'd)

24. Bailiffs, keepers, clerks, and other assistants and employees.
25. Coroner acting as sheriff.
26. Elisors and other substitutes for sheriff.
27. Posse comitatus.

II. COMPENSATION.

28. Right in general.
29. Statutory provisions.
30. Agreements as to fees.
31. Rights after expiration of term of office.
32. Rights of deputies, assistants, and substitutes.
33. Personal service of process, notices or other papers in general, and return thereof.
34. Arrest and imprisonment in civil actions and proceedings.
35. Arrest and imprisonment on criminal process or charges.
36. — In general.
37. — Making arrest.
38. — Commitment, delivery, and discharge of prisoners.
39. — Custody and care of prisoners.
40. — Transportation of prisoners.
41. Transporting insane person to asylum.
42. Service of subpoena or attachment for witness.
43. Service and return of process against property.
44. — In general.
45. — Levy and return of attachment or execution.
46. — Execution of writ of replevin or other delivery of possession of personal property.
47. Custody and care of property.
48. Sales.
49. Collection and payment of money.
50. — In general.
51. — Poundage or commissions.
52. — Settlement between parties.
53. Selection and summoning of jurors.
54. Attendance at court.
55. Attendance on and custody of jury.
56. Attendance at and services connected with elections.

353. SHERIFFS AND CONSTABLES

II. COMPENSATION.(Cont'd)

57. Recognizances, bonds, and undertakings.
58. Certificates, copies, and duplicates.
59. Reports and statements.
60. Computation of per diem compensation.
61. Computation of mileage and traveling expenses.
62. Office expenses, supplies, and clerk hire.
63. Disbursements and incidental expenses.
64. — In general.
65. — Services and expenses of deputies and assistants.
66. Special or extra services or expenses.
67. Persons liable in general.
68. Liability of state, county, or city.
69. Time for payment of fees.
70. Salaries.
71. Accounting as to fees.
72. Penalties and forfeiture of fees.
73. Taxation of fees and disbursements.
74. Recovery of fees or salary.
75. Lien for fees.
76. Recovery of compensation paid.

III. POWERS, DUTIES, AND LIABILITIES.

77. Nature and extent of authority in general.
78. Special statutory powers and duties.
79. Authority of deputies and assistants.
80. Authority of coroner, elisor, or other substitute.
81. Authority of local or special officers.
82. Authority beyond territorial limits of jurisdiction.
83. Authority after expiration of term.
84. Authority of successor as to pending proceedings, and transfer of process, prisoners, and property in hands of former officer.
85. Disqualification to act.
86. Powers and functions as peace officers in general.
87. Duties as to service and return of process in general.
88. Duties as to levy on or other taking of property and custody and disposition thereof.
89. Indemnity to officer.
- 89.1. — In general.
90. — Right to require.

III. POWERS, DUTIES, AND LIABILITIES.(Cont'd)

91. — Requisites of bond or other security.
92. — Effect as to duty of officer.
93. Instructions of parties or attorneys.
94. Duties as to collection, custody, and payment of money.
95. Judicial functions and proceedings.
96. Summary remedies to compel action.
97. Liabilities for official acts in general.
98. Process, judgment, or order of court as protection from liability.
 - (1). In general.
 - (2). Validity of judgment or order in general.
 - (3). Jurisdiction to make order or issue process.
 - (4). Sufficiency of preliminary proceedings.
 - (5). Validity of process.
99. Liabilities for negligence or misconduct in general.
100. Liabilities for acts or omissions of deputies or assistants.
101. Failure to serve or delay or defect in service of process or papers in general.
102. Failure to arrest.
103. Officer as bail.
104. Escape or rescue of prisoners.
105. Ill treatment of and injuries to prisoners.
106. Failure to levy on or take or deliver possession of property.
107. Delay in making levy or taking or delivering possession.
108. Insufficient levy.
109. Excessive levy.
110. Wrongful levy or other taking of property.
111. — In general.
112. — Property not subject to process.
113. — Property of third persons.
 - (1). In general.
 - (2). Property of cotenants.
 - (3). Notice or affidavit of ownership.
 - (4). Return of property to owner.
114. Levy on property mortgaged or otherwise incumbered.
115. Levy on property on demised premises.

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III. POWERS, DUTIES, AND LIABILITIES.(Cont'd)

- 115.1. — In general.
- 116. — Liability for rent.
- 117. — Liability for removal or sale.
- 118. Release of levy or property.
- 119. Loss of or injuries to property.
- 120. Irregular or invalid sale.
- 120.5. Failure to sell or delay in selling.
- 121. Failure to take or taking insufficient bond or other security.
- 122. Failure to pay over money.
- 123. Failure to make return.
- 124. False return.
- 125. Amercement and other summary remedies against officers.
 - (1). In general.
 - (2). Trial or hearing, judgment, and review.
- 126. Actions against officers and indemnitors.
- 127. — In general; nature and form.
- 128. — Rights of action.
- 129. — Conditions precedent.
- 130. — Defenses.
- 131. — Jurisdiction.
- 132. — Venue.
- 133. — Time to sue and limitations.
See also LIMITATION OF ACTIONS.
- 134. — Parties.
- 135. — Addition or substitution of indemnitors in actions against officers.
- 136. — Process and appearance.
- 137. — Pleading.
 - (5). In general.
 - (1). Declaration, petition, or complaint.
 - (2). Plea or answer and subsequent pleadings.
 - (3). Amendments.
 - (4). Issues, proof, and variance.
- 138. — Evidence.
 - (5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency.
- 139. — Damages.
 - (1). In general.
 - (2). Nominal damages.
 - (3). Mitigation and reduction.

III. POWERS, DUTIES, AND LIABILITIES.(Cont'd)

- (4). Exemplary damages.
 - (5). Measure and amount.
 - 140. — Trial.
 - 141. — Judgment and enforcement thereof.
 - 142. — Appeal and error.
 - 143. — Costs.
 - 144. Liabilities of parties and indemnitors to officers.
 - 145. — In general; nature and grounds.
 - 146. — Rights and remedies of indemnitors.
 - 147. — Discharge of indemnitors.
 - 148. — Accrual or release of liability by breach or fulfillment of conditions.
 - 149. — Extent of liability.
 - 150. — Summary remedies.
 - 151. — Actions against indemnitors.
 - 152. Actions against officers for penalties.
 - 153. Criminal responsibility of officers.
- #### IV. LIABILITIES ON OFFICIAL BONDS.
- 154. Nature and grounds in general.
 - 155. Rights and remedies of sureties.
 - 156. Discharge of sureties.
 - 157. Accrual or release of liability by breach or fulfillment of conditions.
 - (1). In general.
 - (2). Commencement and duration of liability and liabilities for successive terms or on successive bonds.
 - (3). Acts of deputies.
 - (4). Acts or omissions covered in general.
 - (5). Collection, custody, and disposition of money.
 - 158. Extent of liability.
 - 158.5. Conclusiveness of former adjudication against officer.
 - 159. Summary remedies.
 - 160. Actions.
 - 160.1. — In general.
 - 161. — Right of action.
 - 162. — Conditions precedent.
 - 163. — Defenses.
 - 164. — Jurisdiction and venue.
 - 165. — Time to sue and limitations.
See also LIMITATION OF ACTIONS.

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IV. LIABILITIES ON OFFICIAL BONDS.(Cont'd)

- 166. — Parties.
- 167. — Process and appearance.
- 168. — Pleading.
 - (5). In general.
 - (1). Declaration, complaint, or petition.
 - (2). Plea or answer.
 - (3). Affidavit of defense.
 - (4). Replication.
 - (5). Defects and amendments.
 - (6). Issues, proof, and variance.
- 169. — Evidence.
- 170. — Damages.
- 171. — Trial, judgment, and review.

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SUBJECTS INCLUDED

The building, regulation, ownership and employment of vessels of every kind
 Rights of property therein
 Rights, duties, and liabilities of owners, mortgagees, charterers, and masters of vessels in general
 Rights and liabilities of shippers and consignees of goods and of passengers, where peculiar to transportation by water

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Admiralty jurisdiction and proceedings, see ADMIRALTY
 Carriers in general, matters applicable to, see CARRIERS
 Collision of vessels, liabilities for, see COLLISION
 Commerce, regulation of, see COMMERCE
 Injuries to persons employed on vessels, see LABOR AND EMPLOYMENT, SEAMEN
 Insurance of vessels, see INSURANCE
 Navigation rights, see WATER LAW
 Particular classes of persons employed on vessels, see SEAMEN, PILOTS

Piracy, see CRIMINAL LAW ¶45.50

Specific services rendered to vessels and liens therefor, see SALVAGE, TOWAGE, WHARVES, MARITIME LIENS

- I. REGULATION IN GENERAL, ¶1-17.
- II. TITLE, ¶17.5-33.
- III. CHARTERS, ¶34-58.
- IV. MASTER, ¶59-71.
- V. RIGHTS AND LIABILITIES OF VESSELS AND OWNERS IN GENERAL, ¶72-87.5.
- VI. BOTTOMRY AND RESPONDENTIA, ¶88-100.
- VII. CARRIAGE OF GOODS, ¶101-155.
- VIII. CARRIAGE OF PASSENGERS, ¶156-169.
- IX. DEMURRAGE, ¶170-185.
- X. GENERAL AVERAGE, ¶186-202.
- XI. LIMITATION OF OWNER'S LIABILITY, ¶203-211.
- XII. WRECK, ¶212-217.

I. REGULATION IN GENERAL.

- 1. What constitutes a vessel.
- 2. Nationality of vessels.
- 3. Power to control and regulate.
- 3.5. Federal control.
- 4. Constitutional and statutory provisions.
- 5. Registry.
- 6. Enrollment and license.
- 7. Duties and taxes.
- 8. Inspection of vessels.
- 9. — In general.
- 10. — Steam vessels.
- 11. Protection of life and property.
- 12. Surveys.
- 13. Regulation of vessels in foreign commerce.
- 14. Regulation of vessels in domestic commerce.
- 15. Port authorities and regulations.
- 16. Penalties and forfeitures for violations of regulations.
- 17. Offenses against navigation laws.

II. TITLE.

- 17.5. Nature and extent of ownership of vessels.
- 18. Title under contract for building vessel.
- 19. Evidence of title.

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II. TITLE.(Cont'd)

20. Rights, powers, and liabilities of owners in general.
21. Rights, powers, and liabilities of part owners.
22. Managing owner, ship's husband, or agent.
23. Sales.
See also SALES.
- 23.1. — In general.
24. — Requisites and validity in general.
25. — Bills of sale.
26. — Delivery.
27. — Rights and liabilities of parties in general.
28. — Rights of bona fide purchasers.
29. Leases.
30. Mortgages and hypothecations.
- 30.1. — In general.
31. — Requisites and validity.
32. — Rights and liabilities of mortgagees.
33. Recording conveyances.

III. CHARTERS.

34. What law governs.
35. Authority to make or amend charter.
36. Requisites and validity of contract of hiring in general.
37. Requisites and validity of charter party.
38. Cancellation, surrender, or rescission.
39. Construction and operation in general.
 - (1). In general.
 - (2). Rules of construction.
 - (3). Measurement, capacity, and tonnage granted.
 - (4). Bills of lading.
 - (5). Authority of charterer.
 - (6). Effect of usage.
 - (7). Arbitration of controversies.
40. Time charters.
41. Charterer as owner for voyage.
42. Seaworthiness and fitness of vessel.
 - (1). In general.
 - (2). Time of seaworthiness or fitness.
 - (3). Fitness to carry specific cargo.
 - (4). Duty to care for vessel and keep in repair.
 - (5). Speed of vessel.
 - (6). Competency of officers and crew.

III. CHARTERS.(Cont'd)

- (7). Implied warranty as to seaworthiness and fitness.
43. Readiness and dispatch of vessel.
44. Cargo.
45. Receiving cargo.
46. Voyage.
47. Discharge of cargo.
48. Charter for carriage of passengers.
49. Charter money and other compensation.
 - (1). In general.
 - (2). Rate, amount, and payment in general.
 - (3). Time for which compensation may be collected and deductions.
 - (4). Hypothecation of freight.
 - (5). Lien.
 - (6). Dispatch money.
 - (7). Actions.
50. Expenditures and liabilities incurred.
51. Breach of charter by owner or master.
 - (1). In general.
 - (2). Acts constituting breach.
 - (3). Freight or cargo carried in violation of charter.
 - (4). Excuses for breach.
 - (5). Waiver of breach.
 - (6). Tender of substituted performance.
 - (7). Damages.
 - (8). Lien of charterer.
52. Breach of charter by charterer.
53. Loss of or injury to cargo.
54. Loss of or injury to vessel or equipment.
 - (1). In general.
 - (2). Negligence or unskillfulness.
55. Charter by government.
56. Subcharter or assignment of charter.
57. Letting vessel on shares.
58. Actions.
 - (1). In general.
 - (2). Pleading.
 - (2.1). Evidence.
 - (2.2). — In general.
 - (2.3). — Presumptions and burden of proof.
 - (2.4). — Admissibility.
 - (2.5). — Weight and sufficiency.
 - (3). Damages.

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IV. MASTER.

- 59. Appointment and removal.
- 60. Authority and duties.
- 60.1. — In general.
- 61. — Scope and extent in general.
- 62. — As agent for owners or charterers.
- 63. — Management and navigation of vessel.
- 64. — Sale or other disposition of vessel.
- 65. — Sale or other disposition of cargo.
- 66. — As to passengers.
- 67. — As to crew.
- 68. Individual rights and privileges as to vessel, cargo, and freight.
- 69. Wages and other remuneration.
- 70. Liabilities on contracts.
- 71. Liabilities for negligence or misconduct.

V. RIGHTS AND LIABILITIES OF VESSELS AND OWNERS IN GENERAL.

- 72. Nature of liability of vessel.
- 73. What law governs.
- 74. Representation of vessel or owners in general.
- 75. Contracts in general.
- 76. Supplies, repairs, and advances.
- 77. Negotiable instruments.
- 78. Torts.
- 79. — In general.
- 80. — Dangerous or defective condition of vessel or appliances.
- 81. — Negligent management or navigation.
 - (1). In general.
 - (2). Injuries to bridges.
- 82. — Negligence of master or crew.
- 83. — Willful or wanton injuries.
- 84. — Injuries to stevedores and other independent contractors and their employees.
 - (1). In general; liability.
 - (2). Degree of care required and duty to give warning.
 - (3). Dangerous or defective condition of vessel, appliances, or places for work.
 - (3.1). — In general.
 - (3.2). — Vessels and places for work.
 - (3.3). — Appliances.

V. RIGHTS AND LIABILITIES OF VESSELS AND OWNERS IN GENERAL. (Cont'd)

- (4). Fellow-servant doctrine in admiralty.
- (5). Contributory or comparative negligence; assumption of risk.
- (6). Liability over of stevedores to vessels or owners for injuries to employees of stevedores or of vessels to stevedores.
- 85. — Joint liability and contribution.
- 86. — Actions.
 - (1). In general.
 - (2). Pleading.
 - (2.1). Evidence.
 - (2.2). — In general.
 - (2.3). — Presumptions and burden of proof.
 - (2.4). — Admissibility.
 - (2.5). — Weight and sufficiency.
 - (3). Trial and relief awarded.
- 87. — Liens.
- 87.5. Dry docks.

VI. BOTTOMRY AND RESPONDENTIA.

- 88. Nature of contract.
- 88.5. What law governs.
- 89. Capacity or authority to make bond.
- 90. Capacity or authority to take bond.
- 91. Necessity for hypothecation.
- 92. Requisites and validity.
- 93. Construction and operation in general.
- 95. Debt secured.
- 96. Lien and priority.
- 97. Negotiability and transfer.
- 98. Loss of vessel or cargo.
- 99. Payment and satisfaction.
- 100. Enforcement.

VII. CARRIAGE OF GOODS.

- 101. Nature of liability of vessel.
- 102. What law governs.
- 103. Statutory regulation in general.
- 104. Contracts of affreightment in general.
- 105. Delivery to vessel.
- 106. Bills of lading and shipping receipts in general.
 - (1). In general.
 - (2). Authority to execute.

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VII. CARRIAGE OF GOODS.(Cont'd)

- (3). Construction, operation, and effect.
- (3.1). — In general.
- (4). — Effect of recitals as to quantity and weight.
- (5). Negotiability and transfer.
- (6). Shipping receipts or bills.
- 107. Special contracts for transportation.
- 107.1. — In general.
- 108. — Merchandise in general.
- 109. — Live stock.
- 110. Loading and stowage.
- 111. Custody and control of goods.
- 112. Transshipment and forwarding.
- 113. Delivery by vessel.
- 114. Nondelivery or misdelivery.
- 114.1. — In general.
- 115. — Failure to deliver in general.
- 116. — Short delivery.
- 117. — Misdelivery.
- 118. Delay in transportation or delivery.
- 119. Loss or injury.
- 119.1. — In general.
- 120. — Grounds of liability in general.
- 121. — Unseaworthiness or unfitness of vessel.
- (1). In general.
- (2). What constitutes unseaworthiness.
- 122. — Negligence in loading.
- 123. — Improper stowage.
- (1). In general.
- (2). Stowage on deck.
- (3). Defective or insufficient dunnage.
- (4). Liability of stevedore.
- (5). Proximate cause of injury or loss.
- 124. — Negligent management or navigation.
- 125. — Deviation or delay.
- 126. — Negligence in discharging or caring for goods after discharge.
- 127. — Negligence or wrongful acts of master or crew.
- 128. — Inherent defects in goods.
- 129. — Contributory negligence.
- 130. — Duties after disaster or loss.
- 131. — Extent of liability and amount of damage.
- 132. — Actions for damages.

VII. CARRIAGE OF GOODS.(Cont'd)

- (1). In general.
- (2). Pleading.
- (3). Presumptions and burden of proof.
- (3.1). — In general.
- (3.2). — Perils of the sea.
- (3.3). — Breakage, leakage, decay, and inherent defects in goods.
- (3.4). — Loss or damage by heat or fire.
- (3.5). — Loading, storage, and discharge.
- (3.6). — Management, navigation, deviation, or delay.
- (3.7). — Negligence or wrongful acts of master or crew.
- (3.8). — Extent of liability or damages, and notice of claim.
- (4). — Seaworthiness and fitness of vessel.
- (5). Admissibility, weight, and sufficiency of evidence.
- (5.1). — In general.
- (5.2). — Seaworthiness and fitness of vessel.
- (5.3). — Perils of the sea.
- (5.4). — Loading, storage, and discharge.
- (5.5). — Deviation and delay.
- (5.6). — Loss by fire.
- (5.7). — Shortage in delivery and extent of damage.
- (6). Trial.
- 133. — Lien.
- 134. Statutory exemptions from liability in general.
- 135. Statutory exemption from liability by diligence of owner as to vessel.
- 136. — In general.
- 137. — Seaworthiness, manning, equipment, and supplies.
- 138. — Causes of loss or injury.
- 139. Limitation of liability by contract or bill of lading.
- 140. — In general.
- (1). In general.
- (2). Amount of liability.
- 141. — Exemption from particular risks or causes of loss.

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VII. CARRIAGE OF GOODS.(Cont'd)

- (1). In general.
- (2). Manner of loading or stowage.
- (3). Perils of the seas.
- (4). Unseaworthiness or defective equipment or apparatus.
- 142. — Requirements as to notice and time to sue vessel.
- 143. Persons liable for loss or damage.
- 144. Freight.
- 144.1. — In general.
- 145. — When earned in general.
- 146. — Pro rata.
- 147. — Rate and amount.
- 148. — Deductions and offsets.
- 149. — Persons entitled to collect.
- 150. — Persons liable.
- 150.5. — Assignment or hypothecation.
- 151. — Payment or tender.
- 152. — Refunding.
- 153. — Actions.
- 154. — Lien.
- 155. Penalties and forfeitures for violations of regulations.

VIII. CARRIAGE OF PASSENGERS.

- 156. Nature of liability of vessel.
- 157. What law governs.
- 158. Statutory regulation in general.
- 159. Regulations as to steam vessels.
- 160. Regulations as to dangerous articles.
- 161. Regulations as to immigrants and others not cabin passengers.
- 162. Authority or license to carry passengers.
- 163. Fare, passage, tickets, and special contracts.
- 164. Accommodations on vessel.
- 165. Voyage and discharge at destination.
- 166. Personal injuries.
 - (.5). In general.
 - (1). Care required and liability in general.
 - (2). Limitation of liability.
 - (3). Contributory or comparative negligence; assumption of risk.
 - (4). Pleading and evidence.
 - (5). Trial.
 - (6). Liens.
 - (7). Ejection of passengers.

VIII. CARRIAGE OF PASSENGERS.(Cont'd)

- 167. Passengers' effects.
 - (1). In general.
 - (2). Limitation of liability.
- 168. Penalties and forfeitures for violations of regulations.
- 169. Offenses incident to carriage of passengers.

IX. DEMURRAGE.

- 170. Nature of liability.
- 171. Construction of charter party or bill of lading.
- 172. Effect of customs and usages.
- 173. Liability of charterer or shipper in general.
- 174. Liability of consignee in general.
- 175. Delay in loading or sailing.
- 176. Delay during voyage.
- 177. Delay in unloading.
 - (1). In general.
 - (2). Construction of provisions of contract.
 - (2.1). — In general.
 - (3). — "Dispatch" or "customary" or "quick dispatch".
 - (4). Notice of arrival or readiness to discharge.
 - (5). Facilities for discharge.
 - (5.1). — In general.
 - (6). — Providing wharf or berth.
 - (7). Customs and usages.
 - (8). Waiver.
- 178. Negligence or wrongful acts of third persons.
- 179. Act of God or vis major.
- 180. Fault of vessel or owner.
- 181. Lay days.
 - (1). In general.
 - (2). Construction of provisions.
 - (3). Notice.
 - (4). Commencement.
- 182. Indemnity.
- 183. Rate, amount, and settlement.
- 184. Actions.
- 185. Lien.

X. GENERAL AVERAGE.

- 186. Nature of right to contribution.

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X. GENERAL AVERAGE.(Cont'd)

- 187. What law governs.
- 188. Perils and acts grounds of contribution.
- 189. — In general.
- 190. — Particular acts and liabilities.
- 191. Losses and expenses subjects of compensation.
- 191.1. — In general.
- 192. — Loss of or damage to vessel.
- 193. — Loss of or damage to cargo.
- 194. — Services and expenses.
- 195. Liability to contribute.
- 196. Statutory exemptions.
- 197. Limitation of liability by charter or bill of lading.
- 198. Bonds.
- 199. Adjustment.
- 200. Actions.
- 201. Lien.
- 202. Failure to enforce contribution.

XI. LIMITATION OF OWNER'S LIABILITY.

- 203. Statutory provisions.
- 204. Vessels and interests to which limitation applies.
- 205. Persons entitled to benefit of limitation.
- 206. Losses and injuries subjects of limitation.
- 207. — In general.
- 208. — Privity or knowledge of owner.
- 209. Proceedings.
 - (1). In general.
 - (1.1). Jurisdiction and venue.
 - (1.2). Notice.
 - (1.3). Abandonment or surrender of vessel or other interest.
 - (1.4). Appraisement and determination of value.
 - (1.5). Filing and determination of claims.
 - (1.6). Enjoining or staying proceedings in other suits.
 - (1.7). Review, fees, and costs.
 - (2). Right to limitation of liability and conditions precedent.
 - (3). Pleading, evidence, and issues.
 - (4). Pleading limitation in other action.
- 210. Distribution of proceeds.
- 211. Liabilities on bonds.

XII. WRECK.

- 212. What constitutes wreck.
- 213. Rights of property.
- 214. Protection and disposition.
- 215. Duties and liabilities of owners.
- 216. Injuries to wreck.
- 217. Offenses.

355. SIGNATURES

SUBJECTS INCLUDED

Names of parties to instruments in writing, affixed to such instruments to give them validity or authenticate them

Necessity, making, and sufficiency thereof in general

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Names in general, see NAMES

Particular classes of instruments, signatures to, see BILLS AND NOTES, DEEDS, CONTRACTS and other specific topics

Particular classes of persons or officers, signatures by, see INFANTS and other specific topics

- 1. Requisites and sufficiency.
- 2. Mode of affixing.
- 3. By hand of party.
- 4. By hand of another.
- 5. Use of mark.

356. SLAVES

SUBJECTS INCLUDED

Persons held as property or in peonage

Nature, origin, legality, and abolition of slavery, and the slave trade

356H. SOCIAL SECURITY

Property in slaves, and incidental rights, duties, and liabilities, and transfers of slave property

Reclamation of fugitive slaves

Regulation of persons incident to the existence of slavery, and violations of such regulations

Disabilities of slaves and their descendants arising from their condition of servitude

Offenses by or against slaves, or under peonage laws

Manumission, emancipation, and proceedings to obtain or establish freedom

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Discrimination by reason of former condition, protection against, see CIVIL RIGHTS

1. Nature, origin, and legality of slavery.
2. Slave trade.
3. Who were slaves.
4. Property in slaves.
- 4.5. — In general.
5. — Rights and powers of owners.
6. — Duties and liabilities of owners.
7. Transfers of slaves.
8. Hiring of slaves.
9. Fugitive slaves.
10. Regulation of persons incident to the existence of slavery.
11. Status in general.
12. Personal rights and disabilities.
- 12.5. Marriage of slaves.
13. Rights of property of slaves.
14. Inheritance by, from, or through slaves.
15. Contracts by slaves.
16. Torts by slaves.
17. Actions by or against slaves.
18. Crimes by slaves.
19. Offenses against slaves.
20. Right to freedom.
21. Proceedings for freedom.
22. Manumission.
23. Emancipation.
24. Abolition of slavery; peonage; human trafficking.
25. Legalizing cohabitation and legitimizing issue of former slaves.

356H. SOCIAL SECURITY

SUBJECTS INCLUDED

Federal old age, survivors, and disability insurance benefits

Supplemental security income

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Assistance for needy aged, blind, or disabled persons under state law, see PUBLIC ASSISTANCE

Assistance for needy families under state law, see PUBLIC ASSISTANCE

Asylums for indigent children, aged persons, etc., see ASYLUMS AND ASSISTED LIVING FACILITIES

Benefits for temporarily disabled workers, see PUBLIC ASSISTANCE

*Black lung benefits, see LABOR AND EMPLOYMENT XV(B)

Food stamps and related programs, see PUBLIC ASSISTANCE

Funding issues, see UNITED STATES

Medical assistance programs, including Medicare and Medicaid, see HEALTH

Mentally deficient or ill persons, care when indigent, see MENTAL HEALTH

Particular personal relations, duties incident to, see MARRIAGE AND COHABITATION, PARENT AND CHILD, and other specific topics

Private pension systems for employees, see LABOR AND EMPLOYMENT VII

Public employees' retirement and pensions, see MUNICIPAL CORPORATIONS, STATES, UNITED STATES, and other specific topics

Railroad employees' retirement benefits, see LABOR AND EMPLOYMENT IV(C)

Taxation for social security and public welfare purposes, see INTERNAL REVENUE, TAXATION

Unemployment compensation, see UNEMPLOYMENT COMPENSATION

I. IN GENERAL, ¶1-20.

II. BENEFITS, ¶21-200.

(A) IN GENERAL, ¶21-50.

(B) DISABILITY BENEFITS, ¶51-80.

356H. SOCIAL SECURITY

II. BENEFITS—Cont'd

- (C) EMPLOYMENTS, EMPLOYERS, AND EMPLOYEES COVERED; INSURED STATUS, § 81-90.
- (D) PERSONS ENTITLED TO BENEFITS; DERIVATIVE BENEFITS, § 91-110.
- (E) PERSONS DISQUALIFIED FROM BENEFITS, § 111-120.
- (F) COMPUTATION, AMOUNT, AND PERIODS OF BENEFITS; DEDUCTIONS, § 121-130.
- (G) PAYMENTS AND RECOVERY BACK, § 131-140.
- (H) ASSIGNMENT OF BENEFITS, § 141-150.
- (I) REPRESENTATIVE PAYEES, § 151-200.
- III. PROCEEDINGS, § 201-240.
- IV. JUDICIAL REVIEW OR INTERVENTION, § 241-280.
- V. COSTS AND FEES, § 281-300.
- VI. OFFENSES AND PENALTIES, § 301-303.

I. IN GENERAL.

- 1. In general.
- 2. Statutory provisions.
- 3. — In general.
- 4. — Purpose and construction.
 - (1). In general.
 - (2). Liberal or strict construction.
- 5. — Validity.
 - (1). In general.
 - (2). Sex discrimination.
 - (3). Discrimination by reason of illegitimacy.
- 6. — Retroactive operation.
- 7. Administration of programs.
- 8. — In general.
- 9. — Rules, regulations, and other policy-making.
- 10. — Internal agency documents; manuals.
- 11. — Social Security Rulings.
- 12. — Records, reports, and returns in general; disclosure.
- 13. — Correction of earnings records.

II. BENEFITS.

(A) IN GENERAL.

- 21. In general.
- 22. Retirement and old age benefits.

II. BENEFITS.(Cont'd)

- 23. Death and survivors benefits.
- 24. Lump-sum death benefits.
- 25. Need-based benefits; supplemental security income.
Claims based on disability, see II(B).
- 26. — In general.
- 27. — Eligibility and entitlement to benefits in general.
- 28. — Income and resource limitations.
- (B) DISABILITY BENEFITS.
- 51. In general.
- 52. Establishment of disability and entitlement to benefits in general.
- 53. Nature and severity of condition or impairment.
- 54. — In general.
- 55. — Particular conditions or impairments in general.
- 56. — Inception of condition or impairment; onset date.
- 57. — Duration of condition or impairment.
- 58. — Subjective symptoms; pain.
 - (1). In general.
 - (2). Credibility of claimant.
- 59. — Mental and psychological conditions or impairments.
- 60. — Remediable conditions or impairments; compliance with treatment.
- 61. — Cessation of condition or impairment; medical improvement.
- 62. Ability to work.
- 63. — In general.
- 64. — Substantial gainful activity in general.
- 65. — Current work.
- 66. — Past or customary work.
- 67. — Other work; individual capabilities and employment opportunities.
 - (1). In general.
 - (2). Residual functional capacity in general.
 - (3). Exertional requirements and limitations; light or sedentary work.
 - (4). Age, education, and experience.
 - (5). Medical-Vocational Guidelines; "grids".

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II. BENEFITS.(Cont'd)

- (6). Actual availability of employment; ability to compete.
- (7). Geographical area considered.
- 68. — Regained ability to work; vocational rehabilitation.
- 69. — Renewed employment; trial work.
- 70. Alcohol and drugs; substance abuse.
- 71. Disability of non-workers.
Derivative benefits, see II(D).
- 72. — In general.
- 73. — Disabled spouses.
- 74. — Disabled children.

- (1). In general.
- (2). Mental and psychological conditions or impairments.

- 75. Determinations or awards by other entities, effect of.

(C) EMPLOYMENTS, EMPLOYERS, AND EMPLOYEES COVERED; INSURED STATUS.

- 81. In general.
- 82. Compensation, earnings, and wages in general.
- 83. Particular employments, employers, and employees.
- 84. — In general.
- 85. — Agriculture.
- 86. — Government employment.
- 87. — Self-employment.
- 88. Bona fide employment; motive; family relations.

(D) PERSONS ENTITLED TO BENEFITS; DERIVATIVE BENEFITS.

- 91. In general.
- 92. Spouses.
Right of spouses to benefits based on their own disability, see ¶73.
- 93. — In general.
- 94. — Former spouse.
- 95. — Surviving spouse.
 - (1). In general.
 - (2). Surviving former spouse.
 - (3). Lump-sum death benefits.
- 96. — Spouses caring for children; mother's or father's benefits.
- 97. Children.
Right of children to benefits based on their own disability, see ¶74.
- 98. — In general.

II. BENEFITS.(Cont'd)

- 99. — Adopted children.
- 100. — Stepchildren.
- 101. — Surviving children.
 - (1). In general.
 - (2). Surviving adopted children.
 - (3). Surviving stepchildren.
 - (4). Posthumous children.
 - (5). Lump-sum death benefits.
- 102. Parents.
- 103. Estate of deceased individual.
- 104. Other particular persons.

(E) PERSONS DISQUALIFIED FROM BENEFITS.

- 111. In general.
- 112. Residency and citizenship requirements; aliens.
- 113. Convicts, prisoners, and fugitives.

(F) COMPUTATION, AMOUNT, AND PERIODS OF BENEFITS; DEDUCTIONS.

- 121. In general.
- 122. Need-based benefits; supplemental security income.
- 123. Disability benefits.
- 124. Coordination of benefits.
- 125. Windfall elimination.

(G) PAYMENTS AND RECOVERY BACK.

- 131. In general.
- 132. Need-based benefits; supplemental security income.
- 133. Disability benefits.

(H) ASSIGNMENT OF BENEFITS.

- 141. In general.
- 142. Execution, levy, attachment, garnishment, or other legal process.

(I) REPRESENTATIVE PAYEES.

- 151. In general.
- 152. Need-based benefits; supplemental security income.
- 153. Disability benefits.

III. PROCEEDINGS.

- 201. In general.
- 202. Making claim; application.
- 203. Hearing.
- 204. — In general.

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III. PROCEEDINGS.(Cont'd)

- 205. — Necessity; right to hearing.
- 206. Scope of inquiry on claim; matters considered; development of record.
- 207. — In general.
- 208. — Need-based benefits; supplemental security income.
- 209. — Disability benefits.
 - (1). In general.
 - (2). Medical and other expert evidence in general.
 - (3). Nature and severity of condition or impairment.
 - (4). Ability to work; residual functional capacity.
 - (5). Alcohol and drugs; substance abuse.
 - (6). Disability of non-workers; spouses and children.
 - (7). Examination of experts and other witnesses; hypothetical questions.
- 210. Bias.
- 211. Counsel or other representation.
- 212. Evidence.
- 213. — In general.
- 214. — Administrative notice.
- 215. — Presumptions and burden of proof.
 - (1). In general.
 - (2). Need-based benefits; supplemental security income.
 - (3). Disability benefits.
 - (4). — In general.
 - (5). — Shifting burden.
 - (6). — Alcohol and drugs; substance abuse.
 - (7). — Disability of non-workers; spouses and children.
- 216. — Admissibility.
 - (1). In general.
 - (2). Need-based benefits; supplemental security income.
 - (3). Disability benefits.
 - (4). — In general.
 - (5). — Medical and other expert evidence.
- 217. — Weight and sufficiency in general.
Weight and sufficiency of evidence in particular cases, see II.
 - (1). In general.

III. PROCEEDINGS.(Cont'd)

- (2). Medical and other expert evidence in general.
 - 218. Findings and conclusions.
 - 219. — In general.
 - 220. — Need-based benefits; supplemental security income.
 - 221. — Disability benefits.
 - (1). In general.
 - (2). Medical evidence in general.
 - (3). Nature and severity of condition or impairment.
 - (4). — In general.
 - (5). — Subjective symptoms; pain.
 - (6). Ability to work; residual functional capacity.
 - (7). Alcohol and drugs; substance abuse.
 - (8). Disability of non-workers; spouses and children.
 - 222. Decision or determination.
 - 223. — In general.
 - 224. — Conclusiveness and effect.
 - (1). In general.
 - (2). Need-based benefits; supplemental security income.
 - (3). Disability benefits.
 - 225. — Reopening and reconsideration.
 - (1). In general.
 - (2). Need-based benefits; supplemental security income.
 - (3). Disability benefits.
 - 226. Proceedings for adjustment or termination of benefits.
 - 227. — In general.
 - 228. — Need-based benefits; supplemental security income.
 - 229. — Disability benefits.
 - 230. Administrative review.
 - 231. — In general.
 - 232. — Scope of review; record; new or additional evidence.
 - 233. — Findings and conclusions.
 - 234. — Decision or determination; remand and proceedings thereon.
- #### IV. JUDICIAL REVIEW OR INTERVENTION.
- 241. In general.
 - 242. Decisions reviewable.
 - 243. — In general.

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IV. JUDICIAL REVIEW OR INTERVENTION.(Cont'd)

- 244. — Finality.
- 245. — Mootness.
- 246. Exhaustion of other remedies.
- 247. Persons entitled to seek review or intervention; standing; parties.
- 248. Preservation of error; waiver and estoppel.
- 249. Record.
- 250. — In general.
- 251. — Review as limited to record; new or additional evidence.
- 252. Time for proceedings.
- 253. Course and conduct of proceedings.
- 254. Presumptions and burdens.
- 255. Scope or standard of review.
- 256. — In general.
- 257. — Discretion and judgment of agency in general; deference.
- 258. — De novo review in general.
- 259. — Theory and grounds of decision below.
- 260. — Record as a whole.
- 261. — Questions of law.
 - (1). In general.
 - (2). Need-based benefits; supplemental security income.
 - (3). Disability benefits.
- 262. — Questions of fact and matters of evidence.
 - (1). In general.
 - (2). Need-based benefits; supplemental security income.
 - (3). Disability benefits.
- 263. — Substantial evidence.
 - (1). In general.
 - (2). Need-based benefits; supplemental security income.
 - (3). Disability benefits.
- 264. Harmless error.
- 265. — In general.
- 266. — Need-based benefits; supplemental security income.
- 267. — Disability benefits.
- 268. Determination and disposition.
- 269. — In general.
- 270. — Reversal.
- 271. — Remand.
 - (1). In general.

IV. JUDICIAL REVIEW OR INTERVENTION.(Cont'd)

- (2). Need-based benefits; supplemental security income.
- (3). Disability benefits.
- (4). — In general.
- (5). — Particular cases.
- 272. — Proceedings on remand; mandate.
- 273. Further review.
- 274. — In general.
- 275. — Need-based benefits; supplemental security income.
- 276. — Disability benefits.
- 277. Review after remand.

V. COSTS AND FEES.

- 281. In general.
- 282. Amount and computation in general.
- 283. Representation in administrative proceedings.
- 284. Representation in court.
- 285. Awards following remand.
- 286. Contingency fee arrangement or other agreement, and effect thereof.
- 287. Multiple awards.
- 288. Proceedings to impose.
- 289. — In general.
- 290. — Judicial review.

VI. OFFENSES AND PENALTIES.

- 301. In general.
- 302. Prosecutions.
- 303. Sentence and punishment.

358. SPECIFIC PERFORMANCE

SUBJECTS INCLUDED

Actions to compel performance of contracts by parties thereto
Nature and scope of the remedy in general
What contracts may be so enforced
Grounds of such actions and defenses thereto
Jurisdiction to compel such performance and proceedings therefor

358. SPECIFIC PERFORMANCE

Incidental or alternative relief
Judgments or decrees and enforcement thereof, and costs in such actions

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Contracts, requisites, validity, and construction, see **CONTRACTS, VENDOR AND PURCHASER**, and other specific topics relating to particular classes of contracts
Sufficiency of memorandum of contract under statute of frauds, and estoppel to invoke such statute, see **FRAUDS, STATUTE OF**

- I. NATURE AND GROUNDS OF REMEDY IN GENERAL, ¶1-24.
- II. CONTRACTS ENFORCEABLE, ¶25-86.
- III. GOOD FAITH AND DILIGENCE, ¶87-101.
- IV. PROCEEDINGS AND RELIEF, ¶102-134.

I. NATURE AND GROUNDS OF REMEDY IN GENERAL.

- 1. Nature and purpose in general.
- 2. Statutory provisions.
- 3. Grounds of relief in general.
- 4. Existence of other remedy.
- 5. Inadequacy of remedy at law.
- 6. Mutuality of remedy.
- 7. Waiver or abandonment of right.
- 8. Discretion of court.
- 9. Enforcing substantial performance.
- 10. Enforcing partial performance.
 - (1). In general.
 - (2). Enforcement of contract of husband or wife on refusal of other to join.
- 11. Defenses or objections to relief.
- 12. — In general.
- 13. — Performance impossible.
- 14. — Performance involving act or assent of person not party to contract.
- 15. — Enforcement ineffectual or not beneficial.
- 16. — Enforcement inequitable or involving hardship.
- 17. Persons entitled to enforce performance.
- 18. Persons as against whom performance may be enforced.

I. NATURE AND GROUNDS OF REMEDY IN GENERAL.(Cont'd)

- 19. — In general.
 - 20. — Interest in subject-matter.
 - 21. — Husband or wife of party to contract.
 - 22. — Purchasers in general.
 - 23. — Bona fide purchasers.
 - 24. — Executors, administrators, devisees, and heirs.
- #### II. CONTRACTS ENFORCEABLE.
- 25. Requisites and validity in general.
 - 26. Existence and condition of subject-matter.
 - 27. Certainty.
 - 28. — In general.
 - (1). In general.
 - (2). Contracts relating to real property.
 - (3). Time of performance.
 - (4). Parties.
 - 29. — Description of subject-matter.
 - (1). In general.
 - (2). Description of lands in general.
 - (3). Contract for part of tract.
 - 30. — Compensation and payment.
 - 31. Completeness.
 - 32. Mutuality of obligation.
 - (5). In general.
 - (1). Necessity of mutuality.
 - (2). Performance by party not bound.
 - (3). Mutuality of particular contracts.
 - 33. Capacity of parties in general.
 - 34. Contracts between husband and wife.
 - 35. Contracts of married women.
 - 36. Contracts of corporations.
 - 37. Conclusion of agreement.
 - 38. Oral contracts in general.
 - 39. Oral contracts within statute of frauds.
 - 40. Part performance of oral contracts.
 - 41. — In general.
 - 42. — Performance referable to contract.
 - 43. — Acts constituting performance in general.
 - 44. — Payment.
 - 45. — Performance of services.
 - 46. — Possession.
 - 47. — Improvements and expenditures.
 - 48. Consideration.

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II. CONTRACTS ENFORCEABLE.(Cont'd)

- 49. — In general.
- 49.1. — Necessity.
- 49.2. — Adequacy and sufficiency.
- 50. — Insufficiency in connection with other objections.
- 51. Fairness and reasonableness.
- 52. Mistake.
- 53. Misrepresentation and fraud.
- 54. Duress and undue influence.
- 55. Illegality.
- 56. Alternative stipulations in general.
- 57. Options.
- 58. Effect of stipulations for liquidated damages or penalty.
- 59. Contracts subject to conditions.
- 60. Modification of contract.
- 61. Rescission or other termination of contract.
- 62. Subject-matter of contracts in general.
- 63. Contracts relating to real property.
- 64. — In general.
- 65. — Enforcement by purchaser.
- 66. — Enforcement by vendor.
- 67. Contracts relating to personal property.
- 68. — In general.
- 69. — Specific articles or goods.
- 70. — Corporate stock or securities.
- 71. — Patents and patented articles.
- 72. — Good will, trade-marks, and trade secrets.
- 73. Contracts for personal services or acts in general.
- 74. Contracts for construction of buildings or other works.
- 75. Contracts for continuous acts during long period.
- 76. Contracts for loans, advances, or payments of money.
- 77. Contracts for security or indemnity.
- 78. Contracts for insurance.
- 79. Contracts for partnership.
- 80. Contracts for submission to arbitration.
- 81. Awards.
- 82. Marriage settlements.
- 83. Separation agreements between husband and wife.
- 84. Conveyances enforceable as contracts.

II. CONTRACTS ENFORCEABLE.(Cont'd)

- 85. Gifts.
- 86. Contracts to adopt, devise, or bequeath.

III. GOOD FAITH AND DILIGENCE.

- 87. Nature and grounds of duty of plaintiff.
- 88. Good faith of plaintiff in general.
- 89. Fraud or inequitable conduct of plaintiff subsequent to contract.
- 90. Necessity of diligence of plaintiff.
- 91. Notice and demand by plaintiff.
- 92. Time for performance by plaintiff in general.
 - (1). In general.
 - (2). Time of acquiring or perfecting title.
- 93. Time as of the essence of the contract.
- 94. Sufficiency of performance by plaintiff in general.
- 95. Sufficiency of title of vendor.
- 96. Conveyance or tender thereof.
- 97. Payment of consideration or tender thereof.
 - (.5). In general.
 - (1). Necessity.
 - (2). Sufficiency of payment.
 - (3). Sufficiency of tender.
- 98. Effect of delay or default of plaintiff.
- 99. — In general.
- 100. — Change in value of property or other circumstances.
- 101. Waiver and estoppel to urge objections to delay or of default.

IV. PROCEEDINGS AND RELIEF.

- 102. Form of remedy.
- 103. Jurisdiction.
- 104. Venue.
- 105. Time to sue, limitations, and laches.
 - (.5). In general.
 - (1). Accrual of cause of action.
 - (2). Limitations.
 - (3). Laches.
- 106. Parties.
 - (1). In general.
 - (2). Joint contractors.
 - (3). Heirs of party to contract.
 - (4). Mortgagees, trustees, and beneficiaries.

358. SPECIFIC PERFORMANCE

IV. PROCEEDINGS AND RELIEF.(Cont'd)

- 107. Process and appearance.
- 108. Injunction and other preliminary relief in general.
- 109. Receiver.
- 110. Payment of consideration into court.
- 111. Surveys.
- 112. Pleading.
- 112.1. — In general.
- 113. — Mode and form in general.
- 114. — Bill, complaint, or petition.
 - (1). In general.
 - (2). Averments as to contract.
 - (3). Averments as to parties and property.
 - (4). Averments as to performance, good faith, and diligence.
 - (5). Ability of defendant to perform.
 - (6). Prayer for relief.
- 115. — Cross-bill, cross-complaint, or counterclaim for specific performance.
- 116. — Plea or answer, and subsequent pleadings.
- 116.5. — Amended and supplemental pleading.
- 116.9. — Demurrer.
- 117. — Issues, proof, and variance.
- 118. Evidence.
- 118.1. — In general.
- 119. — Presumptions and burden of proof.
- 120. — Admissibility.
- 121. — Weight and sufficiency.
 - (.5). In general.
 - (1). Clearness and positiveness.
 - (2). Degree of proof required.
 - (3). Sufficiency in general.
 - (4). Making of contract in general.
 - (5). Part performance of contract within statute of frauds.
 - (6). Establishment of contracts with persons since deceased.
 - (7). Establishment of contract to devise or bequeath.
 - (8). Validity of contract.
 - (9). Subject-matter and terms of contract.
 - (10). Termination of contract.
 - (11). Performance, good faith, and diligence of plaintiff.

IV. PROCEEDINGS AND RELIEF.(Cont'd)

- 122. Dismissal before hearing.
- 123. Trial or hearing.
- 124. Reference.
- 125. Relief awarded.
- 125.1. — In general.
- 126. — Performance of contract in general.
 - (1). In general.
 - (2). Relief authorized by contract.
 - (3). Relief authorized by pleadings.
- 127. — Alternative, additional, or incidental equitable relief.
 - (1). In general.
 - (2). Enforcement of lien on property.
 - (3). Sufficiency of pleadings to authorize relief.
- 128. — Recovery of compensation or damages instead of specific performance.
 - (1). In general.
 - (2). Performance impossible.
 - (3). Items, measure, and amount of damages.
 - (4). Sufficiency of pleadings to authorize decree for damages.
- 129. — Recovery of damages in addition to specific performance.
- 130. — Relief to defendant.
- 131. Judgment or decree.
- 132. Performance and enforcement of judgment or decree.
- 133. Appeal.
- 134. Costs.

359. SPENDTHRIFTS

SUBJECTS INCLUDED

Persons incapacitated by their wastefulness
Their rights and disabilities in general
Control and protection of their property
Legal proceedings affecting such persons

360. STATES

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Spendthrift trusts, creation and operation, see TRUSTS

Testamentary capacity of persons adjudged spendthrift, see WILLS

1. Power to regulate.
2. Statutory provisions.
3. Who may be adjudged spendthrifts.
4. Jurisdiction of courts.
5. Inquisitions.
6. Guardians or trustees.
7. Property and conveyances.
8. Contracts.
9. Actions.

360. STATES

SUBJECTS INCLUDED

The several bodies politic forming by their union the United States of America

Status, organization, powers, and relations to each other of the governments existing before the Constitution of the United States, as separate colonies and under the articles of confederation

Relations to the United States and to each other under the Constitution

Admission of new states into the union

Boundaries of states

Status of states in insurrection or rebellion, and of seceded and confederate states

Rights and powers of state governments in general, of state legislatures, and of governors and executive officers and agents of states in general

State property, contracts, and finances

Claims against states and actions by or against them

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Charitable and reformatory institutions, see ASYLUMS AND ASSISTED LIVING FA-

CILITIES, HEALTH, INFANTS, PRISONS

Citizens of the several states and their rights in general, see ALIENS, IMMIGRATION, AND CITIZENSHIP, CIVIL RIGHTS, CONSTITUTIONAL LAW

Courts of the states, see COURTS and particular subjects of jurisdiction—

Judges and other officers thereof, and officers connected with the administration of justice, see JUDGES, ATTORNEY GENERAL, COURTS, SHERIFFS AND CONSTABLES, and other specific topics

Removal of cases from state courts to federal courts, see REMOVAL OF CASES

Election of members of state legislature, governors, and other state officers, see ELECTION LAW

Eminent domain, power and exercise thereof, see EMINENT DOMAIN

Extradition between states, see EXTRADITION AND DETAINERS

Inferior officers, see PUBLIC EMPLOYMENT, GAME and other specific topics

Insurrection and rebellion, see INSURRECTION AND SEDITION

Interstate commerce, see COMMERCE

Military and naval forces of state, see MILITIA

Powers, distribution among the legislative, judicial and executive departments, see CONSTITUTIONAL LAW, ADMINISTRATIVE LAW AND PROCEDURE

Public lands, see PUBLIC LANDS

Taxation and revenue, see TAXATION

United States, nature of the union between the states and powers of the national government, see UNITED STATES

I. POLITICAL STATUS AND RELATIONS, ¶1–18.93.

(A) IN GENERAL, ¶1–18.

(B) FEDERAL SUPREMACY; PRE-EMPTION, ¶18.1–18.93.

II. GOVERNMENT AND OFFICERS, ¶19–84.

III. PROPERTY, CONTRACTS, AND LIABILITIES, ¶85–112.

IV. FISCAL MANAGEMENT, PUBLIC DEBT, AND SECURITIES, ¶113–168.5.

360. STATES

V. CLAIMS AGAINST STATE, ¶169–189.
VI. ACTIONS, ¶190–215.

I. POLITICAL STATUS AND RELATIONS.

(A) IN GENERAL.

1. Nature, status, and sovereignty in general.
4. Status under Constitution of United States, and relations to United States in general.
 - 4.1. Operation within states of Constitution and laws of United States.
 - (1). In general.
 - (2). Particular provisions.
 - 4.3. Guaranty by United States of republican form of government.
 - 4.4. Powers reserved to states.
 - (1). In general.
 - (2). Police power.
 - (3). Other particular powers.
 - 4.16. Powers of United States and infringement on state powers.
 - (1). In general.
 - (2). Federal laws invading state powers.
 - (3). Surrender of state sovereignty and coercion of state.
 - 4.19. Cooperation between state and United States.
 5. Relations among states under Constitution of United States.
 - (1). In general.
 - (2). Full faith and credit in each state to the public acts, records, etc. of other states.
 6. Compacts between states.
 7. Relations of states to foreign nations.
 8. New states.
 - 8.1. — In general.
 9. — Admission of territory.
 10. — Annexation.
 11. Territorial extent and boundaries.
 12. — In general.
 - 12.1. — Boundaries on rivers, lakes, and ocean waters.
 - 12.2. — Jurisdiction over waters forming boundary.
 13. — Establishment of boundaries.
 14. Cession of territory.
 15. Division of state.
 16. States in insurrection or rebellion.

I. POLITICAL STATUS AND RELATIONS.(Cont'd)

17. Secession from Union, and status of seceded states.
18. Confederate States.

(B) FEDERAL SUPREMACY; PREEMPTION.

- 18.1. In general.
- 18.3. Preemption in general.
- 18.5. Conflicting or conforming laws or regulations.
- 18.7. Occupation of field.
- 18.9. Federal administrative regulations.
- 18.11. Congressional intent.
- 18.13. State police power.
- 18.15. Particular cases, preemption or supersession.
- 18.17. Aviation; airports.
- 18.19. Banking and financial or credit transactions.
- 18.21. Carriers; railroads.
- 18.23. Civil rights in general.
- 18.25. Education.
- 18.27. Domestic relations.
- 18.28. — In general.
- 18.29. — Community property laws.
- 18.31. Environment; nuclear projects.
- 18.33. Fish and game.
- 18.35. Garnishment and attachment; exemptions.
- 18.37. Governmental immunity.
- 18.39. Housing; landlord and tenant.
- 18.41. Insurance.
- 18.43. International relations; aliens.
- 18.45. Labor and employment.
- 18.46. — In general.
- 18.47. — Unemployment compensation and workers' compensation.
- 18.49. — Discrimination; retaliatory discharge.
- 18.51. — Pensions and benefits.
- 18.53. — Labor organizations; members, officers, and dues.
- 18.55. — Disputes and concerted activities.
- 18.57. Maritime matters.
- 18.59. Mines and minerals.
- 18.61. Motor vehicles; highways.
- 18.63. Offenses and punishments.
- 18.65. Product safety; food and drug laws.
- 18.67. Professions.

360. STATES

I. POLITICAL STATUS AND RELATIONS.(Cont'd)

- 18.69. Property and regulations affecting it; eminent domain.
- 18.71. Public officers and employees; elections.
- 18.73. Energy and public utilities.
- 18.75. Revenue and taxation.
- 18.77. Securities and exchange regulations.
- 18.79. Social security and public welfare.
- 18.81. Telecommunications; wiretap.
- 18.83. Trade regulation; monopolies.
- 18.84. — In general.
- 18.85. — Petroleum products marketing.
- 18.87. — Copyrights and patents.
- 18.89. War and national emergency; armed services.
- 18.91. Waters and public lands.
- 18.93. Immunity of federal government or instrumentalities from state regulation.

II. GOVERNMENT AND OFFICERS.

- 19. Establishment and organization of government.
- 20. De facto government.
- 21. Government powers.
 - (1). In general.
 - (2). Police power.
- 22. Seat of government.
- 23. Seal, arms, flag, and other insignia.
- 24. Legislature.
 - 24.1. — In general.
- 25. — Constitution in general.
- 26. — Separate houses or branches.
- 27. — Legislative districts and apportionment.
 - (1). In general.
 - (2). Power and duty to apportion.
 - (3). Method of apportionment in general.
 - (4). Equality of representation and discrimination.
 - (4.1). — In general.
 - (5). — Population as basis and deviation therefrom.
 - (6). — Ratio between districts and percentage represented by majority.
 - (7). — Political subdivisions; multi-member or floterial districts.

II. GOVERNMENT AND OFFICERS.(Cont'd)

- (8). — Application to bicameral legislature; federal analogy.
- (9). Effect of illegal apportionment.
- (10). Judicial review and control.
- 28. — Members.
 - (1). In general.
 - (2). Privileges and exemptions.
- 29. — Organization.
- 30. — Determination as to election and qualification of members.
- 31. — Mode of action in general.
- 32. — Sessions and meetings.
- 33. — Quorum or number required to be present or act.
- 34. — Committees.
- 35. — Rules of procedure and conduct of business.
- 37. — Minutes and records.
- 38. — Publication of proceedings.
- 39. — Orders and resolutions.
- 39.5. — Investigations.
- 40. — Contempt.
- 41. Governor.
- 42. Lieutenant Governor.
- 43. Exercise of supreme executive authority.
- 44. Creation and abolition of executive offices in general.
- 45. Establishment of executive departments or boards.
- 46. Appointment or election of officers.
- 47. Eligibility to office.
- 48. Qualification of officers.
- 49. De facto officers.
- 50. Deputies and assistants.
- 51. Term of office, vacancies, and holding over.
- 52. Resignation, suspension, and removal or impeachment of officers.
- 53. Appointment or employment and tenure of agents and employees in general.
See also PUBLIC EMPLOYMENT for cases involving civil service rules and proceedings.
- 54. Special or temporary appointment or employment.
- 55. Rights and privileges of officers in general.
- 56. Compensation of officers, agents and employees.
- 57. — In general; power to regulate.

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II. GOVERNMENT AND OFFICERS.(Cont'd)

- 58. — Constitutional and statutory provisions, in general.
- 59. — Amendment and repeal of statutes.
- 60. — Particular officers and employees.
 - (1). In general.
 - (2). Civil service employees.
- 60.1. — Additional compensation and perquisites.
 - (1). In general; holding two offices.
 - (2). Constitutional restrictions.
- 60.2. — Overtime or absence; deductions and forfeitures.
- 60.3. — Suspension, removal or abolition of office.
- 60.4. — Special employment; commissions and fees.
- 61. — Legislature, members' and employees' compensation.
 - (1). In general.
 - (2). Constitutional restrictions.
- 62. — Expenses and losses; reimbursement.
- 63. — Increase or reduction during term.
- 64. — Allowance, payment and collection.
 - (1). In general.
 - (2). Judicial remedies.
 - (3). Improper payment and remedies therefor.
- 64.1. — Retirement and incidental benefits.
 - (1). In general.
 - (2). Constitutional and statutory provisions.
 - (3). Right to benefits, and amount.
 - (4). Funds and contributions.
 - (5). Insurance and death benefits.
 - (6). Allowance and payment; interest.
 - (7). Judicial remedies.
- 65. Authority and powers of officers and agents, and exercise thereof.
- 66. — In general.
- 67. — Executive departments, boards, or other bodies.
- 68. — Particular executive officers.
- 69. — Inferior ministerial officers or agents.
- 70. — Special authority or employment.
- 71. Duties of officers and agents and performance thereof.

II. GOVERNMENT AND OFFICERS.(Cont'd)

- 72. — In general.
 - 73. — Particular officers and services.
 - 74. — Agents and employees.
 - 75. Custody and care of public funds and other property.
 - 76. Accounting and settlement.
 - 77. Disabilities of officers.
 - 78. Liabilities for official acts.
 - 79. Liabilities of officers for negligence or misconduct.
 - 80. Liabilities on official bonds.
 - (1). In general.
 - (2). Enforcement.
 - 81. Criminal responsibility of officers and agents.
 - 82. State institutions.
 - 83. Public improvements and works.
 - 84. Corporations controlled by state.
- #### III. PROPERTY, CONTRACTS, AND LIABILITIES.
- 85. Acquisition of property.
 - 86. Construction, improvement, protection, and repair of buildings and other works.
 - 87. Use of property.
 - 88. Control and regulation of public buildings and places.
 - 89. Disposition of property.
 - 90. Capacity of state to contract in general.
 - 91. Powers of Legislature to contract.
 - 92. Powers of particular boards or officers to contract.
 - 93. — In general.
 - 94. — Particular subject-matter or purposes.
 - 95. Individual interest of officer in contract.
 - 96. Amount of contract and appropriation or provision for payment.
 - 97. Express contracts in general.
 - 98.1. Proposals or bids for contracts.
 - 98.2. — In general.
 - 98.3. — Necessity for submission to competition.
 - 98.4. — Preferences; conditions and restrictions on bidders.
 - 98.5. — Request or advertisement; specifications.
 - 98.6. — Form and requisites.

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**III. PROPERTY, CONTRACTS,
AND LIABILITIES.(Cont'd)**

- 98.7. — Deposit or other security.
- 98.8. — Acceptance or rejection in general.
- 98.9. — Award to lowest bidder.
- 98.10. — Withdrawal or amendment; failure to enter into contract.
- 98.11. — Rights and remedies of disappointed bidders.
 - (1). In general.
 - (2). Standing.
 - (3). Scope of review.
 - (4). Determination and disposition.
- 99. Formal requisites of contracts.
- 100. Validity and sufficiency of contracts.
- 101. Contractors' bonds.
- 102. Unauthorized or illegal contracts.
- 103. Implied contracts.
- 104. Construction and operation of contracts.
- 105. Assignment of contracts.
- 106. Modification or rescission of contracts.
- 107. Performance or breach of contracts.
- 108. Rights and remedies of contractor and sureties.
- 108.5. Rights and remedies of subcontractors, laborers, and materialmen.
- 109. Rights and remedies of state on contracts in general, and debts due state.
- 110. Priority of state as creditor.
- 111. State expenses and charges and statutory liabilities.
- 112. Torts.
 - (1). In general.
 - (2). Statutory provisions; waiver of immunity.
- 112.1. — Acts or omissions of officers, agents, or employees.
 - (1). In general.
 - (2). Governmental or proprietary functions.
 - (3). Particular persons or agencies; scope of employment.
 - (4). Independent contractors.
- 112.2. — Nature of act or claim.
 - (1). In general.
 - (2). Personal injuries in general.
 - (3). Property damage in general.
 - (4). State institutions, injuries in operation of.

**III. PROPERTY, CONTRACTS,
AND LIABILITIES.(Cont'd)**

- (5). State militia; armories.
- (6). State parks, injuries in.
- (7). Unlawful arrest, imprisonment, or prosecution.

**IV. FISCAL MANAGEMENT, PUBLIC
DEBT, AND SECURITIES.**

- 113. Power to incur indebtedness in general.
- 114. Purposes of expenditures in general.
- 115. Limitation of amount of indebtedness or expenditure.
- 116. Requirement of provision for payment of indebtedness.
- 117. Contracts involving indebtedness or expenditures.
- 118. Borrowing money.
- 119. Limitation of use of funds or credit.
- 120. Unauthorized debts.
- 121. Administration of finances in general.
- 122. Collection and custody of funds.
- 123. Disbursements in general.
- 124. Loaning and investment of funds.
- 126. General funds.
- 127. Special funds.
- 128. Apportionment of funds.
- 129. Appropriations.
- 129.1. — In general.
- 130. — Necessity.
- 131. — Making and requisites.
- 132. — Operation and effect.
- 133. — Transfer.
- 134. Payment of indebtedness in general.
- 135. Warrants and certificates of indebtedness.
- 136. — In general.
- 137. — Power and duty to issue.
- 138. — Issuance, requisites, and validity.
- 139. — Construction and operation.
- 140. — Negotiability and transfer.
- 141. — Surrender for reissue, funding, or redemption.
- 142. — Payment.
- 143. — Remedies.
- 144. Bills and notes in general.
- 145. Bills of credit and other securities intended to circulate as money.
- 146. Bonds and other securities.
- 147. — In general.

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IV. FISCAL MANAGEMENT, PUBLIC DEBT, AND SECURITIES.(Cont'd)

- 148. — Power and duty to issue.
- 149. — Limitation of amount.
- 150. — Proceedings preliminary to issue.
- 151. — Conditions precedent to issue in general.
- 152. — Provision for payment or redemption.
- 153. — Sale or other disposition.
- 154. — Form and contents.
- 155. — Execution.
- 156. — Issuance and delivery.
- 157. — Validity in general.
- 158. — Ratification of invalid bonds.
- 159. — Curative statutes.
- 160. — Rights of payees or original purchasers.
- 162. — Rights and liabilities on transfer in general.
- 163. — Bona fide purchasers.
- 164. — Rights and remedies of holders of invalid securities.
- 165. — Sinking funds and redemption.
- 166. — Payment in general.
- 167. — Payment of interest and coupons.
- 168. — Actions.
- 168.5. Rights and remedies of taxpayers.

V. CLAIMS AGAINST STATE.

- 169. Nature of claims required to be presented.
- 170. Amount.
- 171. Interest.
- 171.5. Assignment.
- 173. Auditing boards or officers.
- 174. Time for presentation.
- 175. Statement.
- 176. Verification and proof.
- 177. Presentation and filing.
- 178. Authority to allow.
- 179. Compromise.
- 180. Arbitration.
- 181. Audit or hearing.
- 182. Decision.
- 183. Review of decision.
- 184. Court or board of claims in general.
- 184.1. Constitutional and statutory provisions.
- 184.2. Jurisdiction.
 - (1). In general.

V. CLAIMS AGAINST STATE.(Cont'd)

- (2). Particular claims.
- 184.4. Rules.
- 184.5. Procedure in general.
- 184.6. Defenses.
- 184.7. Conditions precedent.
- 184.8. Limitation and laches.
 - See also LIMITATION OF ACTIONS.*
 - (1). In general.
 - (2). Relief.
- 184.10. Persons entitled to sue and parties.
- 184.11. Dismissal of claim.
- 184.12. Discovery.
- 184.13. Evidence in general.
- 184.14. Presumptions and burden of proof.
- 184.15. Weight and sufficiency of evidence.
 - (1). In general.
 - (2). Automobile accident claims.
 - (3). Contract claims.
 - (4). Employees' claims.
 - (5). Flooding and seepage claims.
 - (6). Inmates of state institutions, claims for injuries by.
 - (7). Inmates of state institutions, claims for injuries to.
 - (8). Park visitors, claims for injuries to.
 - (9). State buildings, claims for injuries to visitors or occupants.
 - (10). Miscellaneous claims.
- 184.25. Pleading and form and requisites of claims.
 - (1). In general.
 - (2). Amendment.
 - (3). Printing claims.
 - (4). Issues, proof, and variance.
- 184.29. Trial or hearing.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Findings.
- 184.32. Judgment.
- 184.33. Costs and attorney fees.
- 184.34. Appeal and error in general.
- 184.35. Presentation or reservation in lower tribunal of grounds of review.
- 184.36. Requisites and proceedings for transfer of cause.
- 184.37. Record.
- 184.38. Questions of fact.
- 184.39. Dismissal.
- 184.40. Scope and extent of review.

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V. CLAIMS AGAINST STATE.(Cont'd)

- (1). In general.
 - (2). Presumptions.
 - (3). Discretion.
 - (4). Harmless error.
 - (5). Determination and disposition of cause.
185. Effect of allowance or disallowance.
187. Payment.
188. Making or presentation of false claims.

VI. ACTIONS.

190. Capacity of state to sue in general.
191. Liability and consent of state to be sued in general.
- 191.1. — In general.
- 191.2. — Power to waive immunity or consent to suit.
- (1). In general.
 - (2). Conditions and restrictions.
- 191.3. — Constitutional and statutory provisions.
- (1). In general.
 - (2). Validity of particular statutes.
- 191.4. — Necessity of consent.
- (1). In general.
 - (2). Nature and capacity of parties.
 - (3). Foreign states.
 - (4). Nature of proceeding.
 - (5). Contract or tort.
 - (6). Property rights and proprietary matters.
- 191.5. — Modification or withdrawal of consent.
- 191.6. — Mode and sufficiency of consent.
- (1). In general.
 - (2). Necessity of constitutional or statutory consent.
 - (3). Resolutions and private acts.
- 191.7. — Construction of grant of consent.
- 191.8. — Effect of consent or waiver.
- (1). In general.
 - (2). Application of rules governing private litigants.
 - (3). Substantive or remedial effect.
- 191.9. — Particular actions.
- (1). In general.
 - (2). Declaratory judgment.
 - (3). Eminent domain.
 - (4). Highway matters.

VI. ACTIONS.(Cont'd)

- (5). Property interests in general.
 - (6). Tax matters.
 - (7). Torts.
- 191.10. — What are suits against state or state officers.
192. Rights of action by state or state officers.
193. Rights of action against state or state officers.
194. Conditions precedent to action against state.
195. — In general.
196. — Notice, demand, or presentation of claim.
- (1). In general.
 - (2). Service or presentation; timeliness.
 - (3). Excuses for, and relief from, delay or failure.
 - (4). Form and sufficiency.
 - (5). Waiver and estoppel.
198. Defenses in general.
199. Set-off and counterclaim.
200. Jurisdiction and venue.
201. Time to sue, limitations, and laches.
See also LIMITATION OF ACTIONS.
202. Authority to sue in name of state or state officer.
203. Parties.
204. Process.
205. Appearance and representation by attorney.
208. Pleading.
209. Evidence.
211. Trial.
- 211.5. New trial.
212. Judgment and relief.
213. Execution and enforcement of judgment.
214. Appeal and error.
215. Costs.

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SUBJECTS INCLUDED

Written laws in general and, more particularly, legislative acts

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Technical aspects of their enactment, amendment, and repeal

Requisites, validity, construction, operation, and effect in general

Severability

Validity of retroactive application

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Administrative construction of statutes, see ADMINISTRATIVE LAW AND PROCEDURE ¶428 and specific topics

Appropriations, see STATES ¶129, UNITED STATES ¶317

Constitutional requirements affecting validity of statutes, other than as to mode of enactment, general or special laws, and subjects and titles of acts, see CONSTITUTIONAL LAW, STATES, and specific topics

Contracts contrary to statute, see CONTRACTS ¶104

Legislative bodies, constitution and proceedings other than in the enactment of statutes, see STATES, TERRITORIES, UNITED STATES

Lobbying and other conduct directed at influencing legislative action, regulation of, see LOBBYING

Ordinances, see MUNICIPAL CORPORATIONS IV(B)

Particular subjects, construction and operation of statutes concerning, see CRIMINAL LAW, INTERNAL REVENUE, TAXATION, and other specific topics

Pleading and proof of statutes, see PLEADING, EVIDENCE

Resolutions, see STATES ¶39, UNITED STATES ¶227

Statutory—

Offenses, see CRIMINAL LAW and topics relating to particular offenses

Penalties, see PENALTIES

Remedies, see ACTION and topics relating to particular forms and causes of action

I. IN GENERAL, ¶1001–1020.

II. ENACTMENT, ¶1021–1060.

III. CONSTRUCTION, ¶1061–1400.

(A) IN GENERAL, ¶1061–1090.

(B) PLAIN LANGUAGE; PLAIN, ORDINARY, OR COMMON MEANING, ¶1091–1100.

III. CONSTRUCTION—Cont'd

(C) CLARITY AND AMBIGUITY; MULTIPLE MEANINGS, ¶1101–1120.

(D) PARTICULAR ELEMENTS OF LANGUAGE, ¶1121–1150.

(E) STATUTE AS A WHOLE; RELATION OF PARTS TO WHOLE AND TO ONE ANOTHER, ¶1151–1170.

(F) EXTRINSIC AIDS TO CONSTRUCTION, ¶1171–1200.

(G) OTHER LAW, CONSTRUCTION WITH REFERENCE TO, ¶1201–1240.

(H) LEGISLATIVE HISTORY, ¶1241–1260.

(I) LEGISLATIVE CONSTRUCTION, ¶1261–1280.

(J) EXECUTIVE CONSTRUCTION, ¶1281–1300.

(K) PARTICULAR CLASSES OF STATUTES, CONSTRUCTION OF, ¶1301–1340.

(L) DETERMINATION OF CONSTRUCTION, ¶1341–1360.

(M) PRESUMPTIONS AND INFERENCES AS TO CONSTRUCTION, ¶1361–1400.

IV. OPERATION AND EFFECT, ¶1401–1440.

V. AMENDMENT, ¶1441–1470.

VI. REVISION AND CODIFICATION, ¶1471–1490.

VII. REPEAL, ¶1491–1510.

VIII. VALIDITY, ¶1511–1550.

IX. RETROACTIVITY, ¶1551–1610.

X. SUBJECTS AND TITLES, ¶1611–1630.

XI. GENERAL AND SPECIAL LAWS, ¶1631–1730.

(A) IN GENERAL, ¶1631–1670.

(B) APPLICABILITY OF GENERAL LAW AS AFFECTING VALIDITY OF SPECIAL LAW, ¶1671–1700.

(C) UNIFORMITY OF OPERATION, ¶1701–1730.

XII. SUBMISSION TO POPULAR VOTE, ¶1731–1791.

(A) IN GENERAL, ¶1731–1740.

(B) INITIATIVE, ¶1741–1770.

(C) REFERENDUM, ¶1771–1791.

I. IN GENERAL.

1001. In general.

1002. Nature and definition of legislative acts.

1003. — In general.

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I. IN GENERAL.(Cont'd)

- 1004. — Substantive or procedural statutes.
- 1005. — Remedial statutes.
- 1006. — Penal statutes.
- 1007. — Other particular classes of statutes.
- 1008. Status of legislative body.
- 1009. Powers and duties of legislature in general.
- 1010. Powers of legislature at special or alternating sessions.
- 1011. Powers of separate houses of legislature.

II. ENACTMENT.

- 1021. In general.
- 1022. Notice.
- 1023. Recommendation by executive or other authority.
- 1024. Introduction of bills.
- 1025. Mode of enactment.
- 1026. Reference of bills to committee.
- 1027. Printing and distribution of copies of bills.
- 1028. Reading and consideration of bills.
- 1029. Amendment of pending bills.
- 1030. Passage of bills.
- 1031. — In general.
- 1032. — Mode of voting, and entry of yeas and nays.
- 1033. — Number of votes required.
- 1034. — Particular classes of statutes.
- 1035. — Concurrence of separate houses of legislature.
- 1036. Approval or veto by executive.
- 1037. — In general.
- 1038. — Necessity for approval and authority to veto.
- 1039. — Presentation.
- 1040. — Recall by legislature.
- 1041. — Time for action by executive.
- 1042. — Effect of adjournment of legislature.
- 1043. — Approval.
- 1044. — Disapproval and return with objections; veto.
- 1045. — Disapproval of portion; line-item veto.

II. ENACTMENT.(Cont'd)

- 1046. — Inaction by executive; pocket veto.
- 1047. — Passage notwithstanding disapproval: override of veto.
- 1048. Enrollment, authentication, and filing.
- 1049. Promulgation and publication.
- 1050. Reenactment.
- 1051. — In general.
- 1052. — Adoption of or reference to previously enacted statute; incorporation.
- 1053. Formal requisites of statutes.
- 1054. Offenses relating to enactment.

III. CONSTRUCTION.

(A) IN GENERAL.

- 1061. In general.
- 1062. Role, authority, and duty of construer or interpreter.
- 1063. — In general.
- 1064. — Judicial construction; role, authority, and duty of courts.
Separation of powers, see CONSTITUTIONAL LAW XX.
- 1065. Rules, principles, maxims, and canons of construction in general.
- 1066. Reason, reasonableness, and rationality.
- 1067. Wisdom, practicality, and common sense.
- 1068. Consistency, uniformity, and fairness.
- 1069. Liberal or strict construction.
- 1070. Strained or forced construction.
- 1071. Intent.
- 1072. — In general.
- 1073. — Will of legislature.
- 1074. Purpose.
- 1075. — In general.
- 1076. — Purpose and intent.
- 1077. — Policy behind or supporting statute.
- 1078. Language.
- 1079. — In general.
- 1080. — Language and intent, will, purpose, or policy.
- 1081. — Construction as written.
- 1082. Construction based on multiple factors.

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(B) PLAIN LANGUAGE; PLAIN, ORDINARY, OR COMMON MEANING.

- 1091. In general.
- 1092. Natural, obvious, or accepted meaning.
- 1093. Literal, precise, or strict meaning; letter of the law.

(C) CLARITY AND AMBIGUITY; MULTIPLE MEANINGS.

- 1101. In general.
- 1102. What constitutes ambiguity; how determined.
- 1103. Resolution of ambiguity; construction of unclear or ambiguous statute or language.
- 1104. — In general; factors considered.
- 1105. — Purpose and intent; determination thereof.
- 1106. — Policy behind or supporting statute.
- 1107. Absence of ambiguity; application of clear or unambiguous statute or language.
- 1108. — In general.
- 1109. — Purpose and intent; unambiguously expressed intent.
- 1110. — Giving effect to statute or language; construction as written.
- 1111. — Plain language; plain, ordinary, common, or literal meaning.

(D) PARTICULAR ELEMENTS OF LANGUAGE.

- 1121. In general.
- 1122. Defined terms; definitional provisions.
Use of dictionaries, see §1181. Statutes concerning construction, and interpretation provisions within statutes, see §1268.
- 1123. Undefined terms.
- 1124. Technical terms.
- 1125. Terms of art.
- 1126. Legal terms; legal meaning.
- 1127. Grammar, spelling, and punctuation.
- 1128. Tense, mood, and voice.
- 1129. Singular and plural.
- 1130. Masculine and feminine.
- 1131. Particular words and phrases.
- 1132. — In general.
- 1133. — Articles.
- 1134. — Conjunctive and disjunctive words.
- 1135. — Words of number or amount.

III. CONSTRUCTION. (Cont'd)

- 1136. — Words of inclusion.
- 1137. Mistakes and errors; misnomer and misdescription.
- 1138. Departing from or varying language of statute.
- 1139. Absent terms; silence; omissions.

(E) STATUTE AS A WHOLE; RELATION OF PARTS TO WHOLE AND TO ONE ANOTHER.

- 1151. In general.
- 1152. Design, structure, or scheme.
- 1153. Context.
- 1154. Related provisions.
- 1155. Construing together; harmony.
- 1156. Superfluity.
- 1157. Conflict.
- 1158. Similarity or difference.
- 1159. Associated terms and provisions; *nosci-tur a sociis*.
- 1160. General and specific terms and provisions; *eiusdem generis*.
- 1161. Relative and qualifying terms and provisions, and their relation to antecedents.
- 1162. Exceptions, limitations, and conditions.
- 1163. — In general.
- 1164. — Provisos.
- 1165. — Grandfather clauses.

(F) EXTRINSIC AIDS TO CONSTRUCTION.

- 1171. In general.
- 1172. Ancillary provisions or material.
- 1173. — In general.
- 1174. — Statements of purpose, intent, or policy in general.
- 1175. — Introductory statements; preambles and prologues.
- 1176. — Recitals and findings.
- 1177. — Titles, headings, and captions.
- 1178. — Comments, notes, and summaries.
- 1179. Treatises and reference works.
- 1180. — In general.
- 1181. — Dictionaries.
- 1182. Contemporary and historical circumstances.
- 1183. — In general.
- 1184. — History of statute.

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III. CONSTRUCTION.(Cont'd)

- 1185. Prior or contemporaneous construction in general.
- 1186. Motives and opinions of particular parties.
- 1187. Policy considerations; public policy.
- 1188. Other particular extrinsic aids.

(G) OTHER LAW, CONSTRUCTION WITH REFERENCE TO.

Controlling or precedential effect of case law, see COURTS ¶88.

- 1201. In general.
- 1202. Prior or existing law in general.
- 1203. Common or civil law.
- 1204. — In general.
- 1205. — Statutory terms with common law meanings.
- 1206. — Statutory alteration or abrogation of common law.
 - (1). In general.
 - (2). Plain, literal, or clear meaning of statute; ambiguity.
 - (3). Liberal or strict construction.
- 1207. — Statutory adoption of common law.
- 1208. — Federal common law.
- 1209. International law.
- 1210. Other statutes.
- 1211. — In general.
- 1212. — Statutory scheme in general.
- 1213. — Construing together; harmony.
- 1214. — Superfluity.
- 1215. — Conflict.
- 1216. — Similar or related statutes.
 - (1). In general.
 - (2). Subject or purpose.
 - (3). In pari materia.

Statutes concerning particular subjects, see specific topics.

- 1217. — General and specific statutes.

Constitutional restrictions on general, special, and local laws, see XI. Statutes concerning particular subjects, see specific topics.
- 1218. — Statutes adopted at same session.
- 1219. — Earlier and later statutes.
- 1220. Other jurisdictions.
- 1221. — In general.
- 1222. — Other countries.
- 1223. — Other states.
- 1224. — Federal and state law.

III. CONSTRUCTION.(Cont'd)

- 1225. Uniform and model acts.
- 1226. Other particular sources of law.

(H) LEGISLATIVE HISTORY.

- 1241. In general.
- 1242. Plain, literal, or clear meaning; ambiguity.
- 1243. Particular kinds of legislative history.
- 1244. — In general.
- 1245. — Motives, opinions, and statements of legislators.
 - (1). In general.
 - (2). Sponsors or authors.
- 1246. — Legislative record or journal.
- 1247. — Evolution of statute.
 - (1). In general.
 - (2). Drafts and earlier versions.
 - (3). Amendments, additions, and other changes.
 - (4). Failed, rejected, and other unenacted provisions.
- 1248. — Committees and hearings in general.
- 1249. — Reports and analyses.
- 1250. — Debates, speeches, and floor statements.
- 1251. — Post-enactment legislative history.

(I) LEGISLATIVE CONSTRUCTION.

- 1261. In general.
- 1262. Plain, literal, or clear meaning; ambiguity.
- 1263. Reenactment or incorporation of prior statutes.
- 1264. — In general.
- 1265. — Prior construction.
- 1266. Clarifying statutes.
- 1267. Legislative silence, inaction, or acquiescence.
- 1268. Statutes concerning construction; interpretation provisions.

(J) EXECUTIVE CONSTRUCTION.

Administrative construction, see ADMINISTRATIVE LAW AND PROCEDURE ¶428.

- 1281. In general.
- 1282. Plain, literal, or clear meaning; ambiguity.

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III. CONSTRUCTION.(Cont'd)

- 1283. Consistent or longstanding construction; approval or acquiescence.
- 1284. Erroneous construction; conflict with statute.
- 1285. Reenactment or incorporation of statute construed, effect of.
- 1286. Particular departments and officers, construction by.
- 1287. — In general.
- 1288. — President or Governor.
- 1289. — Attorney General.

Controlling or precedential effect of Attorney General opinions not involving statutory interpretation, see COURTS ¶89.

(K) PARTICULAR CLASSES OF STATUTES, CONSTRUCTION OF.

- 1301. In general.
- 1302. Statutes to protect the public.
- 1303. Statutes concerning sovereignty.
- 1304. Statutes concerning powers, rights, or privileges.
- 1305. Statutes concerning duties and liabilities.
- 1306. Remedial statutes.
- 1307. — In general.
- 1308. — Liberal or strict construction.
- 1309. Procedural statutes.
- 1310. — In general.
- 1311. — Summary proceedings.
- 1312. Jurisdictional statutes.
- 1313. Immunity statutes.
- 1314. — In general.
- 1315. — Sovereign immunity.
- 1316. Penal statutes.
- 1317. — In general.
Criminal statutes, see CRIMINAL LAW ¶12.7(1).
- 1318. — Liberal or strict construction; rule of lenity.
Criminal statutes, see CRIMINAL LAW ¶12.7(2).
- 1319. Regulatory statutes.
- 1320. Commercial statutes.
- 1321. — In general.
- 1322. — Comments.
- 1323. Revenue statutes.

(L) DETERMINATION OF CONSTRUCTION.

- 1341. In general.
- 1342. Application of statute to subject matter or facts.

III. CONSTRUCTION.(Cont'd)

- 1343. Questions of law or fact.
- 1344. Evidence as to construction in general; admissibility.
- 1345. Burden of proof.
- 1346. Weight and sufficiency.
- 1347. Proceedings; hearing or trial.

(M) PRESUMPTIONS AND INFERENCES AS TO CONSTRUCTION.

- 1361. In general.
- 1362. Nature, characteristics, and knowledge of legislature in general.
- 1363. Intent.
- 1364. — In general.
- 1365. — Purpose; policy behind or supporting statute.
- 1366. Language.
- 1367. — In general.
- 1368. — Plain language; plain, ordinary, common, or literal meaning.
- 1369. — Clarity and ambiguity; multiple meanings.
- 1370. — Technical terms, terms of art, and legal terms.
- 1371. — Absent terms; silence; omissions.
- 1372. Statute as a whole; relation of parts to whole and to one another.
- 1373. — In general.
- 1374. — Giving effect to entire statute and its parts; harmony and superfluity.
- 1375. — Similarity or difference.
- 1376. — Exceptions, limitations, and conditions.
- 1377. — Express mention and implied exclusion; *expressio unius est exclusio alterius*.
- 1378. Extrinsic aids to construction.
- 1379. — In general.
- 1380. — Prior or contemporaneous construction in general.
- 1381. Other law, construction with reference to.
- 1382. — In general.
- 1383. — Prior or existing law in general.
- 1384. — Common or civil law.
- 1385. — Other statutes.
 - (1). In general.
 - (2). Similar or related statutes.

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III. CONSTRUCTION.(Cont'd)

- (3). Statutes from other jurisdictions.
1386. — Change in law.
1387. Legislative history.
1388. Legislative construction.
1389. — In general.
1390. — Reenactment or incorporation of prior statute.
1391. Executive construction.
1392. Particular classes of statutes, construction of.

IV. OPERATION AND EFFECT.

1401. In general.
1402. Construction in view of effects, consequences, or results.
1403. — In general.
1404. — Unintended or unreasonable results; absurdity.
1405. — Relation to plain, literal, or clear meaning; ambiguity.
1406. — Presumptions, inferences, and burden of proof.
1407. Mandatory or directory statutes.
1408. Nature and extent of compliance.
1409. — In general.
1410. — Actual, strict, substantial, practical, or technical compliance.
1411. Persons or entities subject.
1412. — In general.
1413. — Application to government.
1414. — Creation of contractual or other rights.
1415. Extraterritorial operation.
1416. Time of taking effect; effective or operative date.
1417. — In general.
1418. — What is effective or operative date; how determined.
 (1). In general.
 (2). Legislative intent or specification; express provisions.
 (3). Beginning of legislative session.
 (4). End of legislative session; time computed therefrom.
 (5). Passage, approval, or enactment; time computed therefrom.
 (6). Publication or other notice.
 (7). Other particular dates.

IV. OPERATION AND EFFECT.(Cont'd)

1419. — Delay or postponement; future date.
1420. — Conditions or contingencies.
1421. — Emergencies.
1422. — Parts of act taking effect at different times.
1423. Duration and termination.
1424. — In general.
1425. — Expiration; temporary acts and sunset provisions.
1426. — Suspension.
1427. — Changed circumstances; obsolescence.
1428. — Disuse or nonenforcement; desuetude.

V. AMENDMENT.

1441. In general.
1442. Constitutional requirements.
1443. Power to amend.
1444. Amendment of invalid or nonexistent provision.
1445. Title of amending statute; reference to and identification of statute amended.
1446. — In general.
1447. — Particular amending and amended statutes.
1448. Setting forth provision as altered or amended.
1449. — In general; necessity.
1450. — Separate or additional legislation.
1451. — Sufficiency of inclusion or recital.
1452. Implied amendment.
1453. Invalidity of amendatory statute as affecting amended provision.
1454. Construction of amendatory and amended statutes.
1455. — In general.
1456. — Relationship to statute amended; clarification or change of meaning.
1457. — Presumptions.
1458. — Legislative history.
1459. Repeal of amended provision.

VI. REVISION AND CODIFICATION.

1471. In general.
1472. Particular Revised Statutes and Codes.
1473. Effect on previous and existing laws.

361. STATUTES

VI. REVISION AND CODIFICATION. (Cont'd)

- 1474. — In general.
- 1475. — Continuance or alteration of existing law by codification.
- 1476. — Continuance or alteration of existing law by revision.
- 1477. Construction of Revised Statutes and Codes.
- 1478. Amendment of Revised Statutes or Code.
- 1479. Code or Revision as prima facie evidence of the law.

VII. REPEAL.

- 1491. In general.
- 1492. Power to repeal in general.
- 1493. Express repeal.
- 1494. — In general.
- 1495. — Title of repealing statute; reference to and identification of statute repealed.
- 1496. — Recital of provision repealed.
- 1497. — General repeal of inconsistent statutes or provisions.
- 1498. Implied repeal.
- 1499. — In general.
- 1500. — By inconsistent or repugnant statute.
- 1501. — By statute relating to same subject.
 - (1). In general.
 - (2). Repeal of specific by general statute.
 - (3). Repeal of general by specific statute.
 - (4). Repeal by amendatory statute.
 - (5). Repeal of penal statute.
 - (6). Repeal by reenactment.
 - (7). Repeal by revision.
 - (8). Repeal by codification.
- 1502. Invalidity of repealing statute.
- 1503. Repeal of repealing or amendatory statute as revival of repealed or amended statute.
- 1504. Reenactment or revival of repealed statute.
- 1505. Construction of repealing statutes.

VIII. VALIDITY.

Certainty, definiteness, vagueness, and overbreadth, see CONSTITUTIONAL LAW.

- 1511. In general.
- 1512. Judicial authority and duty.
- 1513. Scope of inquiry.
- 1515. Impossibility of performance or enforcement; internal inconsistency.
- 1516. Validity in relation to previous statutes.
- 1517. Recognition of previous invalid statute; ratification.
- 1518. Validity of territorial statutes.
- 1519. — In general.
- 1520. — Contravention of organic act or other fundamental law; preemption.
- 1521. — Disapproval by Congress.
- 1522. Presumptions and construction as to validity.
- 1523. — In general.
- 1524. — Enactment.
- 1525. — Subjects and titles of statutes.
- 1526. — General and special statutes.
- 1527. — Submission to popular vote; initiative and referendum.
- 1528. — Other particular considerations.
- 1529. Effect of total invalidity.
- 1530. — In general.
- 1531. — Particular statutes.
- 1532. Effect of partial invalidity; severability.
- 1533. — In general.
- 1534. — Effect of severability clause.
- 1535. — Particular statutes.
 - (1). In general.
 - (2). Courts, actions, and proceedings.
 - (3). — In general.
 - (4). — Statutes of limitations.
 - (5). Administrative agencies and proceedings.
 - (6). Criminal justice.
 - (7). Governments and political subdivisions.
 - (8). Property.
 - (9). — In general.
 - (10). — Wills, estates, and trusts.
 - (11). — Mortgages and liens.
 - (12). Government property, facilities, and funds.
 - (13). Social Security, public assistance, and other government payments.

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VIII. VALIDITY.(Cont'd)

- (14). Taxation.
- (15). Labor, employment, and public officials.
- (16). Education.
- (17). Elections, voting, and political rights.
- (18). War and national emergency.
- (19). Contracts.
- (20). Trade or business.
- (21). Environment and health.
- (22). Mental health.
- (23). — In general.
- (24). — Sex offenders.
- (25). Motor vehicles.
- (26). Carriers and public utilities.
- (27). Families and children.
- (28). Tort or financial liabilities.
- (29). Aliens, immigration, and citizenship.
- (30). Corporations and other private organizations.
- 1536. — Subjects and titles of statutes.
- 1537. — General and special statutes.
- 1538. — Submission to popular vote; initiative and referendum.

IX. RETROACTIVITY.

- 1551. In general.
- 1552. Nature and definition of retroactive statute.
- 1553. Power to enact; validity.
- 1554. Prospective or retroactive construction.
- 1555. — In general.
- 1556. — Language and intent; express provisions.
 - (1). In general.
 - (2). Nonretroactivity.
- 1557. — Presumptions and inferences.
- 1558. Effect on substantive rights.
- 1559. Effect on vested rights.
- 1560. Imposition of liabilities, penalties, duties, obligations, or disabilities.
- 1561. Remedies and remedial statutes.
- 1562. — In general.
- 1563. — Curative and ameliorative statutes.
- 1564. Procedural statutes.
- 1565. — In general.

IX. RETROACTIVITY.(Cont'd)

- 1566. — Evidentiary statutes.
- 1567. Application to pending actions and proceedings.
- 1568. Declaratory, clarifying, and interpretive statutes.
- 1569. Amendatory statutes.
- 1570. Repealing statutes.
- 1571. — In general.
- 1572. — Rights accrued.
- 1573. — Liabilities incurred.
- 1574. — Pending actions and proceedings.
 - (1). In general.
 - (2). Actions for penalties.
- 1575. — Saving clauses.
- 1576. Validity of particular retroactive statutes.
- 1577. — In general.
- 1578. — Courts, actions, and proceedings.
 - (1). In general.
 - (2). Statutes of limitations.
- 1579. — Administrative agencies and proceedings.
- 1580. — Criminal justice.
- 1581. — Governments and political subdivisions.
- 1582. — Property.
 - (1). In general.
 - (2). Wills, estates, and trusts.
 - (3). Mortgages and liens.
- 1583. — Government property, facilities, and funds.
- 1584. — Social Security, public assistance, and other government payments.
- 1585. — Taxation.
- 1586. — Labor, employment, and public officials.
 - (1). In general.
 - (2). Workers' compensation.
- 1587. — Education.
- 1588. — Elections, voting, and political rights.
- 1589. — War and national emergency.
- 1590. — Contracts.
- 1591. — Trade or business.
- 1592. — Environment and health.
- 1593. — Mental health.
 - (1). In general.
 - (2). Sex offenders.

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IX. RETROACTIVITY.(Cont'd)

- 1594. — Motor vehicles.
- 1595. — Carriers and public utilities.
- 1596. — Families and children.
- 1597. — Tort or financial liabilities.
- 1598. — Aliens, immigration, and citizenship.
- 1599. — Corporations and other private organizations.

X. SUBJECTS AND TITLES.

- 1611. In general.
- 1612. Acts relating to one or more subjects; single-subject rule.
- 1613. — In general.
- 1614. — Purpose of single-subject rule.
- 1615. — Logrolling defined.
- 1616. — Construction of single-subject rule as mandatory or directory.
- 1617. — Statutes relating to particular subjects.
 - (1). In general.
 - (2). Courts, actions, and proceedings.
 - (3). — In general.
 - (4). — Statutes of limitations.
 - (5). Administrative agencies and proceedings.
 - (6). Criminal justice.
 - (7). Governments and political subdivisions.
 - (8). Property.
 - (9). — In general.
 - (10). — Wills, estates, and trusts.
 - (11). — Mortgages and liens.
 - (12). Government property, facilities, and funds.
 - (13). Social Security, public assistance, and other government payments.
 - (14). Taxation.
 - (15). Labor, employment, and public officials.
 - (16). Education.
 - (17). Elections, voting, and political rights.
 - (18). War and national emergency.
 - (19). Contracts.
 - (20). Trade or business.
 - (21). Environment and health.
 - (22). Mental health.

X. SUBJECTS AND TITLES.(Cont'd)

- (23). — In general.
- (24). — Sex offenders.
- (25). Motor vehicles.
- (26). Carriers and public utilities.
- (27). Families and children.
- (28). Tort or financial liabilities.
- (29). Aliens, immigration, and citizenship.
- (30). Corporations and other private organizations.
- 1618. Relation of title to contents of statute; title-subject or clear-expression rule.
- 1619. — In general; construction of title.
- 1620. — Purpose of rule that title expresses subject of statute.
- 1621. — What constitutes sufficient or insufficient title.
 - (1). In general.
 - (2). Comprehensiveness.
 - (3). Cataloging or indexing.
 - (4). Title as means of effecting principal object of statute.
 - (5). Overbroad title.
- 1622. — Titles of repealing statutes.
- 1623. — Titles of amendatory statutes.
- 1624. — Statutes relating to particular subjects.
 - (1). In general.
 - (2). Courts, actions, and proceedings.
 - (3). — In general.
 - (4). — Statutes of limitations.
 - (5). Administrative agencies and proceedings.
 - (6). Criminal justice.
 - (7). Governments and political subdivisions.
 - (8). Property.
 - (9). — In general.
 - (10). — Wills, estates, and trusts.
 - (11). — Mortgages and liens.
 - (12). Government property, facilities, and funds.
 - (13). Social Security, public assistance, and other government payments.
 - (14). Taxation.
 - (15). Labor, employment, and public officials.
 - (16). Education.

361. STATUTES

X. SUBJECTS AND TITLES.(Cont'd)

- (17). Elections, voting, and political rights.
- (18). War and national emergency.
- (19). Contracts.
- (20). Trade or business.
- (21). Environment and health.
- (22). Mental health.
- (23). — In general.
- (24). — Sex offenders.
- (25). Motor vehicles.
- (26). Carriers and public utilities.
- (27). Families and children.
- (28). Tort or financial liabilities.
- (29). Aliens, immigration, and citizenship.
- (30). Corporations and other private organizations.

XI. GENERAL AND SPECIAL LAWS.

(A) IN GENERAL.

- 1631. In general.
- 1632. Laws of general or public nature.
- 1633. Laws of special, local, or private nature.
- 1634. — In general.
- 1635. — General laws compared and distinguished.
- 1636. Particular laws as general or special; validity.
- 1637. — In general.
- 1638. — Courts, actions, and proceedings.
 - (1). In general.
 - (2). Statutes of limitations.
- 1639. — Administrative agencies and proceedings.
- 1640. — Criminal justice.
- 1641. — Governments and political subdivisions.
- 1642. — Property.
 - (1). In general.
 - (2). Wills, estates, and trusts.
 - (3). Mortgages and liens.
- 1643. — Government property, facilities, and funds.
- 1644. — Social Security, public assistance, and other government payments.
- 1645. — Taxation.
- 1646. — Labor, employment, and public officials.

XI. GENERAL AND SPECIAL LAWS.(Cont'd)

- 1647. — Education.
- 1648. — Elections, voting, and political rights.
- 1649. — War and national emergency.
- 1650. — Contracts.
- 1651. — Trade or business.
- 1652. — Environment and health.
- 1653. — Mental health.
 - (1). In general.
 - (2). Sex offenders.
- 1654. — Motor vehicles.
- 1655. — Carriers and public utilities.
- 1656. — Families and children.
- 1657. — Tort or financial liabilities.
- 1658. — Aliens, immigration, and citizenship.
- 1659. — Corporations and other private organizations.
- 1660. Enactment of special laws; notice and publication requirements.
- 1661. Construction, operation, and effect of special laws.

Construction of general and specific statutes relating to the same subject, see §1217.
- 1662. Amendment of special laws.
- 1663. Revision and codification of special laws.
- 1664. Repeal of special laws.
- 1665. — In general.
- 1666. — Repeal by general laws.

(B) APPLICABILITY OF GENERAL LAW AS AFFECTING VALIDITY OF SPECIAL LAW.

- 1671. In general.
- 1672. Modification, suspension, or repeal of general law by special law.
- 1673. Particular laws.
- 1674. — In general.
- 1675. — Courts, actions, and proceedings.
 - (1). In general.
 - (2). Statutes of limitations.
- 1676. — Administrative agencies and proceedings.
- 1677. — Criminal justice.
- 1678. — Governments and political subdivisions.
- 1679. — Property.
 - (1). In general.
 - (2). Wills, estates, and trusts.

361. STATUTES

XI. GENERAL AND SPECIAL LAWS.(Cont'd)

- (3). Mortgages and liens.
- 1680. — Government property, facilities, and funds.
- 1681. — Social Security, public assistance, and other government payments.
- 1682. — Taxation.
- 1683. — Labor, employment, and public officials.
- 1684. — Education.
- 1685. — Elections, voting, and political rights.
- 1686. — War and national emergency.
- 1687. — Contracts.
- 1688. — Trade or business.
- 1689. — Environment and health.
- 1690. — Mental health.
 - (1). In general.
 - (2). Sex offenders.
- 1691. — Motor vehicles.
- 1692. — Carriers and public utilities.
- 1693. — Families and children.
- 1694. — Tort or financial liabilities.
- 1695. — Aliens, immigration, and citizenship.
- 1696. — Corporations and other private organizations.

(C) UNIFORMITY OF OPERATION.

- 1701. In general.
- 1702. Particular laws.
- 1703. — In general.
- 1704. — Courts, actions, and proceedings.
 - (1). In general.
 - (2). Statutes of limitations.
- 1705. — Administrative agencies and proceedings.
- 1706. — Criminal justice.
- 1707. — Governments and political subdivisions.
- 1708. — Property.
 - (1). In general.
 - (2). Wills, estates, and trusts.
 - (3). Mortgages and liens.
- 1709. — Government property, facilities, and funds.
- 1710. — Social Security, public assistance, and other government payments.
- 1711. — Taxation.
- 1712. — Labor, employment, and public officials.

XI. GENERAL AND SPECIAL LAWS.(Cont'd)

- 1713. — Education.
- 1714. — Elections, voting, and political rights.
- 1715. — War and national emergency.
- 1716. — Contracts.
- 1717. — Trade or business.
- 1718. — Environment and health.
- 1719. — Mental health.
 - (1). In general.
 - (2). Sex offenders.
- 1720. — Motor vehicles.
- 1721. — Carriers and public utilities.
- 1722. — Families and children.
- 1723. — Tort or financial liabilities.
- 1724. — Aliens, immigration, and citizenship.
- 1725. — Corporations and other private organizations.

XII. SUBMISSION TO POPULAR VOTE.

State constitutions, see CONSTITUTIONAL LAW III(C)4. Ordinances, see MUNICIPAL CORPORATIONS ¶108, 108.5. Matters not limited to state constitutions, ordinances, or statutes, see ELECTION LAW IX.

(A) IN GENERAL.

- 1731. In general.

(B) INITIATIVE.

- 1741. In general.
- 1742. Constitutionality of initiative statutes.
- 1743. Matters subject to initiative.
- 1744. Petitions in general.
- 1745. Title and text of proposed statute; single-subject rule.
Ballot titles, see ¶1752.
- 1746. Signers and signatures.
- 1747. Authentication.
- 1748. Sufficiency and certification.
- 1749. Submission to legislature; legislative action.
- 1750. Information for voters.
- 1751. — In general.
- 1752. — Ballot title or caption.
- 1753. — Explanatory statements; result statements.
- 1754. — Fiscal impact statements.
- 1755. — Publicity pamphlets and other voter information.

363. STIPULATIONS

XII. SUBMISSION TO POPULAR VOTE.(Cont'd)

- 1756. Election.
- 1757. Conflicting and alternative measures.
- 1758. Fees and expenses.
- 1759. Successive petitions.
- 1760. Construction and operation of initiated statutes.
- 1761. Offenses.

(C) REFERENDUM.

- 1771. In general.
- 1772. Constitutionality of referendum statutes.
- 1773. Matters subject to referendum.
- 1774. Petitions in general.
- 1775. Title and text of referred law; single-subject rule.
Ballot titles, see ⇒1782.
- 1776. Signers and signatures.
- 1777. Authentication.
- 1778. Sufficiency and certification.
- 1779. Submission to legislature; legislative action.
- 1780. Information for voters.
- 1781. — In general.
- 1782. — Ballot title or caption.
- 1783. — Explanatory statements; result statements.
- 1784. — Fiscal impact statements.
- 1785. — Publicity pamphlets and other voter information.
- 1786. Election.
- 1787. Conflicting and alternative measures.
- 1788. Fees and expenses.
- 1789. Successive referenda.
- 1790. Construction and operation of adopted statutes.
- 1791. Offenses.

362. STEAM

SUBJECTS INCLUDED

Regulation of the production and use of steam and of steam boilers, engines, and machinery in general

Supply of steam power or of steam for heating or other purposes

Rights, duties, and liabilities incident thereto

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Employers' duties and liabilities, see LABOR AND EMPLOYMENT

Municipalities' powers, see MUNICIPAL CORPORATIONS

Railroads and steam vessels, use of steam power in operation, see RAILROADS, URBAN RAILROADS, SHIPPING

1. Statutory and municipal regulations in general.
2. Franchises and privileges.
3. Licenses and taxes.
4. Inspection and supervision.
5. Supply of steam or steam power.
6. Injuries incident to production or use.
7. Injuries to boilers, pipes, or appliances.

363. STIPULATIONS

SUBJECTS INCLUDED

Agreements between parties to actions or other proceedings or their attorneys or other representatives relating to proceedings therein

Nature, requisites, sufficiency, operation and effect of such agreements in general

Withdrawing or setting aside such stipulations

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Admiralty, stipulations as security in, see ADMIRALTY

Attorney's authority to enter into stipulations, see ATTORNEY AND CLIENT

Contracts, stipulations in, see CONTRACTS and specific topics dealing with particular classes of contracts

Particular proceedings, construction and effect of stipulations relating to, see APPEARANCE and other specific topics

363. STIPULATIONS

Submission of controversy upon agreed statements of facts without action, see SUBMISSION OF CONTROVERSY

1. Nature and essentials in general.
3. Matters which may be subject of stipulation.
4. Capacity and authority to enter into stipulation.
5. Supervision and approval of court.
6. Necessity for writing in general.
7. Oral stipulations in court.
8. Form and requisites of writing.
9. Entry, filing, or record.
10. Consideration.
11. Validity of provisions.
12. Rescission or withdrawal from stipulation.
13. Setting aside or relief from stipulation.
14. Construction and operation in general.
 - (1). In general.
 - (2). Stipulations as to process.
 - (3). Stipulations as to pleadings and service thereof.
 - (4). Stipulations as to issues and evidence thereunder.
 - (5). Stipulation to abide result of another case.
 - (6). Stipulations for dismissal or discontinuance.
 - (7). Stipulations as to evidence.
 - (8). Admission of evidence in another action or former trial.
 - (9). Documentary evidence.
 - (10). Agreed statement of facts.
 - (11). Stipulations as to trial.
 - (12). Stipulations as to judgment and review.
15. Conclusiveness and effect.
16. — In general.
17. — Persons concluded.
 - (1). In general.
 - (2). Persons not parties to stipulation.
 - (3). Court.
18. — Matters concluded.
 - (1). In general.
 - (2). Stipulation as to parties.
 - (3). Stipulations as to pleadings and service thereof.
 - (4). Stipulations as to issues and evidence thereunder.

- (5). Stipulation to abide result of another case.
- (6). Stipulation as to evidence.
- (7). Agreed statement of facts.
- (8). Stipulations as to trial.
- (9). Stipulations as to judgment and review.

19. Use and enforcement in general.
20. Pleading.
21. Evidence.

365. SUBMISSION OF CONTROVERSY

SUBJECTS INCLUDED

Submission of controversies to courts for determination upon a statement of facts agreed to by the parties, without action

Jurisdiction and proceedings of courts on such submission and statement

Requisites, validity, operation and effect of such submission and statement and of the decision thereon

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Judgments rendered on submissions and agreed statements of facts, entry and effect, see JUDGMENT

Statements of cases or questions certified or reported by one court to another for decision, see APPEAL AND ERROR, COURTS and FEDERAL COURTS

Statements of cases reserved upon trial for decision of questions of law, see TRIAL

Stipulations in actions or proceedings, see STIPULATIONS

1. Nature and scope of remedy.
2. Statutory provisions.
3. Controversies which may be submitted.
4. Persons who may submit controversy.
5. Requisites of statement or agreed case.
6. — In general.
7. — Form and contents.
8. — Signature.

366. SUBROGATION

9. — Affidavit or other verification.
11. Filing statement or case.
12. Amendment of statement or case.
13. Construction and operation of statement or case in general.
14. Estoppel or waiver by submission.
16. Dismissal.
17. Scope of inquiry and powers of court.
18. Trial or hearing.
19. Determination and relief awarded.
20. Appeal.
21. Costs.

366. SUBROGATION

SUBJECTS INCLUDED

Substitution in place of creditors, and succession to creditors' rights and remedies, of persons paying debts for which they were not primarily liable, whether payment be in pursuance of an agreement for such substitution or for protection of the interest of the person making it

Rights, liabilities, and remedies of parties in respect of such subrogation

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Insurers' subrogation to rights and remedies of insured, see INSURANCE

Workers' Compensation Acts, subrogation under, see WORKERS' COMPENSATION

1. Nature and theory of right.
2. Relative liabilities of parties as to debt discharged in general.
3. Persons jointly or jointly and severally liable for debt.
 - (1). In general.
 - (2). Mortgage liability.
 - (3). Partners.
 - (4). Tenants in common.
4. Parties to bills or notes.
5. Sureties or guarantors.
6. — In general.

7. — Subrogation to rights of creditor.
 - (1). In general.
 - (2). Subrogation to priority of creditors.
 - (3). Sureties of officers.
 - (4). Sureties of guardians, administrators, or trustees.
 - (5). Sureties of surety.
 - (6). Partners as sureties.
 - (7). Sureties or guarantors on bills or notes.
 - (8). Sureties on delivery, bail, or replevin bonds.
 - (9). Sureties on appeal bonds.
8. — Subrogation to rights of principal.
9. — Subrogation to rights of cosurety.
10. Persons acting in representative, fiduciary, or official capacity.
 - (1). In general.
 - (2). Sheriffs or other officer.
 - (3). Executors and administrators.
 - (4). Guardians or trustees.
11. Persons liable for loss or injury caused by fault of another.
12. Relative interests of parties in property or fund subject to incumbrance discharged.
13. Purchasers of incumbered property.
14. — In general.
- 14.1. — Assumption or knowledge of incumbrance.
- 14.2. — Liens in general.
- 14.3. — Mortgage or deed of trust.
- 14.4. — Vendor's lien.
15. — Purchasers of equity of redemption.
16. — Purchasers at execution or other judicial sale.
17. Junior mortgagees or lienors.
18. Vendors or mortgagors after transfer of mortgaged property.
19. Persons interested in administration of estates.
20. Necessity for payment of debt or incumbrance.
21. — In general.
22. — Protection of interest in property.
23. Persons making advances for discharge of debt or incumbrance.
 - (1). In general.

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- (2). Advances or loans on debtor's request or agreement for benefit of incumbrance discharged.
 - (3). Advances or loans on faith of or agreement for new security.
 - (4). Validity and adequacy of new security.
 - (5). Application of advances to debt or incumbrance.
 - (6). Advances for discharge of vendor's lien.
 - (7). Advances for maritime purposes.
 - (8). Advances for discharge of claim for wages.
- 24. Persons making advances for necessities or improvements.
 - 25. Persons owning funds or property applied by others to debt or incumbrance.
 - 26. Persons making voluntary payments.
 - 27. Agreements for subrogation.
 - 28. Sufficiency of payment or discharge of debt or incumbrance.
 - 29. Mode and effect of subrogation in general.
 - 30. Benefit of original obligation.
 - 31. Assignment or benefit of security or incumbrance.
 - (1). In general.
 - (2). Parties to bills or notes.
 - (3). Sureties or guarantors in general.
 - (4). Assignment or benefit of mortgage, judgment, or lien.
 - (5). Payment operating as equitable assignment.
 - 32. Benefit of remedies of creditor.
 - 33. Extent of right to subrogation.
 - (1). In general.
 - (2). Extent and limitation of creditors' rights.
 - (3). Subrogation proportionate to payment.
 - 34. Assignment of right to subrogation.
 - 35. Waiver or loss of right to subrogation.
 - 36. Persons as against whom subrogation may be enforced.
 - 37. Defenses and grounds of opposition.
 - 38. — In general.
 - 40. — Equitable defenses.
 - 41. Actions and other proceedings for enforcement.

- (5). In general.
 - (1). Nature and form.
 - (2). Conditions precedent.
 - (3). Time to sue, limitations, and laches.
- See also LIMITATION OF ACTIONS.*
- (4). Parties.
 - (5). Pleading.
 - (6). Evidence.
 - (7). Trial.
 - (8). Judgment or decree.
 - (9). Appeal.

367. SUBSCRIPTIONS

SUBJECTS INCLUDED

Promises in writing by one or more persons to contribute money or other property absolutely or conditionally, for purposes of a charitable, educational, religious, or other public nature

Acceptance of such promises and performance of conditions thereof

Rights and liabilities of the parties thereupon, and actions on such subscriptions

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Subscriptions in consideration of an equivalent to be rendered, see **CONTRACTS**

Corporate stock, corporate or municipal bonds, or other securities, etc., see **CORPORATIONS, MUNICIPAL CORPORATIONS**

Written instruments in general, subscription of, see **SIGNATURES**

- 1. Nature and essentials in general.
- 2. Form and contents.
- 3. Execution and delivery.
- 4. Acceptance.
- 5. Consideration.
- 6. Failure of consideration.
- 7. Validity of assent in general.
- 8. Misrepresentation or fraud.
- 9. Illegality.

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10. Construction and operation in general.
12. Joint or several liability.
13. Scope and subject-matter.
14. Place and time of payment.
15. Conditions and performance thereof.
 - (1). In general.
 - (2). Subscription depending on other subscriptions or donations.
 - (3). Time for performance.
 - (4). Waiver and estoppel.
16. Assignment.
17. Release or discharge.
18. Revocation.
19. Abandonment of purpose.
20. Payment.
21. Actions.
 - (5). In general.
 - (1). Nature of action and right to sue.
 - (2). Parties.
 - (3). Defenses.
 - (4). Pleading.
 - (5). Evidence.
 - (6). Question for jury.
 - (7). Instructions.

368. SUICIDE

SUBJECTS INCLUDED

Intentionally killing or attempting to kill one's self
Aiding or advising another to kill himself
Criminal responsibility for such acts
Prosecution and punishment thereof as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Homicide committed in attempting suicide, see HOMICIDE
Life insurance, effect of suicide on, see INSURANCE

1. Nature of act or means, and cause of death.
2. Attempts.

3. Advising, aiding, or agreeing to commit.
4. Prosecution and punishment.

369. SUNDAY

SUBJECTS INCLUDED

The first day of the week as a day of rest

More particularly, its observance by suspension of ordinary business and judicial and other proceedings

Effect of violations of laws requiring observance of the day on validity of acts, transactions, and proceedings affected, and on rights and remedies of persons engaged therein

Prosecution and punishment of such violations as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Holidays generally, see HOLIDAYS

Restrictions on grounds other than the mere character of the day, such as regulation of sale of intoxicants, see INTOXICATING LIQUORS

Time, omission of Sunday in computation, see TIME

1. The day in general.
2. Statutes and ordinances.
3. Acts prohibited in general.
4. Work or labor.
5. Business or occupation.
6. Sports or amusements.
 - (1). In general.
 - (2). Playing baseball.
7. Works of necessity or charity.
8. Observance of other day.
9. Validity of private acts and transactions in general.
10. Validity of contracts and other written instruments.
11. — In general.

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12. — Negotiation on Sunday.
13. — Execution of instrument on Sunday.
14. — Delivery of instrument on Sunday.
15. — Ratification.
16. — Rescission.
17. — Performance of contract on Sunday.
18. Actions on Sunday contracts and transactions.
 - 18.1. — In general.
19. — Rights of action and defenses.
 - (1). In general.
 - (2). Wrongful acts of bailee.
20. — Restoration of consideration or benefit.
21. — Pleading in anticipation of defense of illegality.
22. — Pleading violation of law.
23. — Evidence.
24. — Trial, judgment, and review.
25. Injuries received while violating law.
 - 25.1. — In general.
26. — Liability.
 - (1). In general.
 - (2). Injuries to servants.
 - (3). Injuries to person or property of travelers.
27. — Actions.
28. Penalties for violations of law.
29. Criminal prosecutions for violations of law.
 - (.5). In general.
 - (1). Who are indictable.
 - (2). Affidavit, complaint, indictment, or information.
 - (3). Evidence.
 - (4). Trial.
30. Judicial and official acts and proceedings.
 - (1). In general.
 - (2). Commencement of civil actions or proceedings in general.
 - (3). Civil process and notices.
 - (4). Criminal warrants and arrest.
 - (5). Bail or other bonds.
 - (6). Holding court.
 - (7). Verdict and judgment.
 - (8). Discharge of jury without verdict.

370. SUPERSEDEAS

SUBJECTS INCLUDED

Express suspension, by writ or other mandate or order of court, of enforcement of judgments or orders, or of execution of writs or other process, or of other judicial proceedings

Nature and scope of the remedy in general

Grounds therefor and defenses thereto

To and against whom and as to what judgments, writs, etc., supersedeas is allowed

Jurisdiction over and proceedings to obtain supersedeas

Issuance of writs, orders, etc., of supersedeas, and proceedings thereon

Operation, effect, and enforcement thereof

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Injunctions restraining judicial proceedings, see INJUNCTION, COURTS

Orders in actions or other proceedings staying prosecution thereof or particular steps therein, see ACTION, CREDITORS' REMEDIES, JUDGMENT, and other specific topics

Review—

Of proceedings in actions by writ of supersedeas, see APPEAL AND ERROR

Other writs and proceedings operating by way of supersedeas or stay pending proceedings for review, see APPEAL AND ERROR, CERTIORARI, HABEAS CORPUS, and other specific topics

1. Nature and scope of remedy.
2. Judgments, orders, or writs which may be superseded.
3. Grounds.
4. Jurisdiction and authority to grant supersedeas.
5. Proceedings to procure supersedeas.
6. Writ or order of supersedeas, service thereof, and proceedings thereon.
7. Operation and effect.
8. Violation of writ or order and punishment.
9. Appeal and error.

371. TAXATION

371. TAXATION

SUBJECTS INCLUDED

Exaction of regular contributions from persons or property for support of the government in general

More particularly, such contributions imposed by authority of state legislatures

Nature, extent and delegation of power to tax in general

Constitutional and statutory provisions relating thereto

What persons and property are subject to taxation, and exemptions therefrom

For what uses or purposes the power to tax may be exercised

Levy, assessment, lien, collection, and payment of taxes

Remedies for erroneous taxation

Forfeitures and penalties for failure to comply with tax laws

Sales of property for nonpayment of taxes, redemption therefrom, and rights and titles of purchasers

Disposition of proceeds of taxes

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Duties on imports and exports, see CUSTOMS DUTIES

Indian tribes, taxes imposed by, see INDIANS ¶225

License fees and taxes on occupations, privileges, etc., see LICENSES, INTOXICATING LIQUORS, and specific topics relating to particular occupations

Municipal and other local property taxation and local assessments for public improvements, see MUNICIPAL CORPORATIONS, TOWNS, EDUCATION, HIGHWAYS, and other specific topics

Right to unemployment compensation or benefits, see UNEMPLOYMENT COMPENSATION

United States, excise and other internal taxes imposed by, see INTERNAL REVENUE

I. IN GENERAL, ¶2000–2049.

II. POLL OR CAPITATION TAXES, ¶2050–2059.

III. PROPERTY TAXES, ¶2060–3248.

III. PROPERTY TAXES—Cont'd

(A) IN GENERAL, ¶2060–2084.

(B) LAWS AND REGULATION, ¶2085–2165.

1. IN GENERAL, ¶2085.

2. STATUTORY PROVISIONS, ORDINANCES, AND ADMINISTRATIVE REGULATION, ¶2086–2099.

3. CONSTITUTIONAL REQUIREMENTS AND RESTRICTIONS, ¶2100–2119.

4. CONSTITUTIONAL REGULATION AND RESTRICTIONS CONCERNING EQUALITY AND UNIFORMITY, ¶2120–2149.

5. DOUBLE TAXATION, ¶2150–2159.

6. TAXATION ACCORDING TO VALUE, ¶2160.

7. LIMITATION OF RATE OR AMOUNT, ¶2161–2165.

(C) LIABILITY OF PRIVATE PERSONS AND PROPERTY IN GENERAL, ¶2166–2224.

(D) CORPORATIONS AND CORPORATE STOCK AND PROPERTY, ¶2225–2264.

(E) PUBLIC PROPERTY AND INSTITUTIONS, ¶2265–2284.

(F) EXEMPTIONS, ¶2285–2399.

1. IN GENERAL, ¶2285–2364.

2. PROCEEDINGS TO ESTABLISH AND ENFORCE EXEMPTION, ¶2365–2399.

(G) PLACE OF TAXATION, ¶2400–2409.

(H) LEVY AND ASSESSMENT, ¶2410–2729.

1. IN GENERAL, ¶2410–2429.

2. ASSESSORS AND PROCEEDINGS FOR ASSESSMENT, ¶2430–2459.

3. MODE OF ASSESSMENT IN GENERAL, ¶2460–2489.

4. MODE OF ASSESSMENT OF CORPORATE STOCK, PROPERTY, OR RECEIPTS IN GENERAL, ¶2490–2509.

5. VALUATION OF PROPERTY, ¶2510–2574.

6. ASSESSMENT ROLLS OR BOOKS, ¶2575–2619.

7. EQUALIZATION OF ASSESSMENTS, ¶2620–2639.

8. REVIEW, CORRECTION, OR SETTING ASIDE OF ASSESSMENT IN GENERAL, ¶2640–2684.

371. TAXATION

III. PROPERTY TAXES—Cont'd

(H) LEVY AND ASSESSMENT—Cont'd

9. ARBITRATION OR ALTERNATIVE DISPUTE RESOLUTION, ⑈2685–2689.

10. JUDICIAL REVIEW OR INTERVENTION, ⑈2690–2719.

11. EVIDENCE IN GENERAL, ⑈2720–2729.

(I) LIEN AND PRIORITY, ⑈2730–2749.

(J) PAYMENT AND REFUNDING OR RECOVERY OF TAX PAID, ⑈2750–2799.

(K) COLLECTION AND ENFORCEMENT AGAINST PERSONS OR PERSONAL PROPERTY, ⑈2800–2899.

1. IN GENERAL, ⑈2800–2834.

2. SUMMARY REMEDIES AND ACTIONS, ⑈2835–2870.

3. REMEDIES FOR WRONGFUL ENFORCEMENT, ⑈2871–2899.

(L) SALE OF LAND FOR NONPAYMENT OF TAX, ⑈2900–2999.

(M) REDEMPTION FROM TAX SALE, ⑈3000–3059.

(N) TAX TITLES, ⑈3060–3209.

1. TITLE AND RIGHTS OF PURCHASER AT TAX SALE, ⑈3060–3084.

2. TAX DEEDS, ⑈3085–3139.

3. ACTIONS TO CONFIRM OR TRY TITLE, ⑈3140–3189.

4. RIGHTS AND REMEDIES OF PURCHASER OF INVALID TITLE, ⑈3190–3209.

(O) FORFEITURES AND PENALTIES, ⑈3210–3234.

(P) DISPOSITION OF TAXES COLLECTED, AND FAILURE OF LOCAL AUTHORITIES TO COLLECT, ⑈3235–3248.

IV. EXCISE TAXES IN GENERAL, ⑈3249–3259.

V. EMPLOYMENT TAXES AND WITHHOLDING IN GENERAL, ⑈3260–3299.

VI. LEGACY, INHERITANCE AND TRANSFER TAXES, ⑈3300–3379.

VII. GIFT TAXES, ⑈3380–3399.

VIII. INCOME TAXES, ⑈3400–3599.

(A) IN GENERAL, ⑈3400–3419.

(B) REGULATION, ⑈3420–3444.

(C) INCOMES TAXABLE, ⑈3445–3479.

(D) PERSONS LIABLE, ⑈3480–3499.

(E) DEDUCTIONS, CREDITS, AND EXEMPTIONS, ⑈3500–3524.

VIII. INCOME TAXES—Cont'd

(F) RATES OF TAXATION, SURTAXES, AND ADDITIONAL TAXES, ⑈3525–3529.

(G) ASSESSMENT, ⑈3530–3553.

(II) PAYMENT, ⑈3554–3559.

(I) COLLECTION AND ENFORCEMENT, ⑈3560–3599.

IX. SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES, ⑈3600–3714.

(A) IN GENERAL, ⑈3600–3619.

(B) REGULATIONS, ⑈3620–3635.

(C) TRANSACTIONS TAXABLE IN GENERAL, ⑈3636–3659.

(D) PERSONS SUBJECT TO OR LIABLE FOR TAX, ⑈3660–3671.

(E) RATE AND AMOUNT OF TAX, ⑈3672–3677.

(F) SELECTIVE TAXES, ⑈3678–3685.

(G) LEVY AND ASSESSMENT, ⑈3686–3696.

(H) PAYMENT, ⑈3697–3704.

(I) COLLECTION AND ENFORCEMENT, ⑈3705–3714.

I. IN GENERAL.

2000. In general.

2001. Nature of taxes.

2002. Distinguishing “tax” and “license” or “fee”.

2003. Nature and source of taxing power.

2004. Power of state.

2005. — In general.

2006. — United States entities, property, and securities.

2007. — Corporations created by or chartered in other states.

2008. Territories.

2009. Public purpose.

2010. — In general.

2011. — Particular purposes.

2012. — Special or local purpose, and benefit to locality taxed.

2013. Power of legislature in general.

2014. Mode of exercise of legislative power.

2015. Delegation of power.

2016. — In general.

2017. — Creation of taxing district.

2018. Exercise of delegated power.

2019. Surrender or suspension of power.

2020. Estoppel to exercise power.

2021. Invalid or defective exercise of power.

2022. — In general.

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I. IN GENERAL.(Cont'd)

- 2023. — Power to cure defects or irregularities.
- 2024. Statutory provisions.
- 2025. — In general.
- 2026. — Purpose.
- 2027. — Construction and operation.
- 2028. — Validity.
- 2029. — Retroactive operation.
- 2030. What law governs.
- 2031. Preemption.
- 2032. Local ordinances.
- 2033. Administrative agencies in general.
- 2034. Rules and regulations in general.

II. POLL OR CAPITATION TAXES.

- 2050. In general.
- 2051. Constitutional and statutory provisions.
- 2052. Place of taxation.
- 2053. Levy of poll or capitation tax.
- 2054. Persons subject.

III. PROPERTY TAXES.

(A) IN GENERAL.

- 2060. In general.
- 2061. Nature of property tax.
- 2062. Power of state.
- 2063. — In general.
- 2064. — United States entities, property, and securities.
- 2065. — Corporations created by other states and shares therein.
- 2066. — Corporations chartered in more than one state.
- 2067. Power of territories.
- 2068. Territorial limitations of power.
- 2069. Public purpose.
- 2070. — In general.
- 2071. — Particular purposes.
- 2072. — Special or local purpose, and benefit to locality taxed.
- 2073. Power of legislature in general.
- 2074. Mode of exercise of legislative power.
- 2075. Delegation of power.
- 2076. — In general.
- 2077. — Creation of taxing district.
- 2078. Exercise of delegated power.
- 2079. Surrender or suspension of power.
- 2080. Estoppel to exercise power.

III. PROPERTY TAXES.(Cont'd)

- 2081. Invalid or defective exercise of power.
- 2082. — In general.
- 2083. — Power to cure defects or irregularities.

(B) LAWS AND REGULATION.

1. IN GENERAL.

- 2085. In general.

2. STATUTORY PROVISIONS, ORDINANCES, AND ADMINISTRATIVE REGULATION.

- 2086. In general.
- 2087. Purpose.
- 2088. Construction and operation.
- 2089. Validity.
- 2090. Retroactive operation.
- 2091. What law governs.
- 2092. Preemption.
- 2093. Local ordinances.
- 2094. Administrative agencies in general.
- 2095. Rules and regulations in general.

3. CONSTITUTIONAL REQUIREMENTS AND RESTRICTIONS.

- 2100. In general.
- 2101. Private persons and property in general.
- 2102. Transfers and registrations of instruments.
- 2103. Corporations and corporate stock and property.
- 2104. Levy and apportionment.
- 2105. Assessors and proceedings for assessment.
- 2106. Mode of assessment in general.
- 2107. Mode of assessment of corporate stock, property, or receipts.
- 2108. Assessment rolls or books.
- 2109. Lien and priority.
- 2110. Payment and refunding or recovery of tax paid.
- 2111. Collectors and proceedings for collection in general.
- 2112. Summary remedies and actions.
- 2113. Remedies for wrongful enforcement.
- 2114. Title and rights of purchaser at tax sale.
- 2115. Tax deeds.
- 2116. Actions to confirm or try title.

371. TAXATION

III. PROPERTY TAXES.(Cont'd)

- 2117. Rights and remedies of purchaser of invalid title.
- 2118. Forfeitures and penalties.
- 2119. Restrictions as to purposes of taxation.

4. CONSTITUTIONAL REGULATION AND RESTRICTIONS CONCERNING EQUALITY AND UNIFORMITY.

- 2120. In general.
- 2121. Constitutional requirements and operation thereof.
- 2122. What constitutes tax within constitutional requirement.
- 2123. Discrimination between realty and personalty.
- 2124. Discrimination between residents and nonresidents or aliens.
- 2125. Discrimination between corporations.
- 2126. Mode or form of discrimination in general.
- 2127. Discrimination as to rate or amount.
- 2128. Discrimination as to mode of assessment or valuation.
- 2129. Tax on gross earnings or receipts of corporations.
- 2130. Discrimination as to time of making assessment.
- 2131. Fixing situs of personal property for purpose of taxation.
- 2132. Payment, enforcement, and disposition of taxes collected.
- 2133. Subjects of taxation.
- 2134. Classification of subjects, and uniformity as to subjects of same class.
- 2135. — In general.
- 2136. — Corporations and corporate property in general.
- 2137. — Foreign corporations.
- 2138. — Tax on credits.
- 2139. Different localities.
- 2140. Local taxes, and uniformity as to same locality.
- 2141. Taxation of individuals and corporations.

5. DOUBLE TAXATION.

- 2150. In general.
- 2151. Taxation of same property in another state or district.

III. PROPERTY TAXES.(Cont'd)

- 2152. Tax on mortgages and on property mortgaged.
- 2153. Taxation of corporations in general.
- 2154. Tax on tangible corporate property and on capital stock.
- 2155. Tax on capital stock or other corporate property and on shares of stockholders.
- 2156. Tax on property and on income or proceeds thereof.

6. TAXATION ACCORDING TO VALUE.

- 2160. In general.

7. LIMITATION OF RATE OR AMOUNT.

- 2161. In general.
- 2162. Taxes for special purposes.

(C) LIABILITY OF PRIVATE PERSONS AND PROPERTY IN GENERAL.

- 2166. In general.
- 2167. Statutory provisions.
- 2168. Persons liable in general.
- 2169. Nature of property.
- 2170. — In general.
- 2171. — Real property in general.
- 2172. — Mines, mining rights, and minerals.
- 2173. — Riparian and other water rights and waterworks.
- 2174. — Buildings and other improvements on land.
- 2175. — Incorporeal rights and interests in land.
- 2176. — Personal property in general.
- 2177. — Crops and other products of the soil.
- 2178. — Domestic animals.
- 2179. — Shipping.
- 2180. — Stock in trade of merchant or manufacturer.
- 2181. — Money and deposits of money.
- 2182. — Credits, investments, and securities in general.
- 2183. — Mortgages.
- 2184. — Interests under contracts.
- 2185. — Annuities.
- 2186. Ownership or possession of property, and persons to whom taxable.

371. TAXATION

III. PROPERTY TAXES.(Cont'd)

- 2187. — In general.
- 2188. — Particular estates or interests in property.
- 2189. — Property mortgaged or otherwise encumbered.
- 2190. — Equitable estates or interests in general.
- 2191. — Property held in trust or other fiduciary capacity.
- 2192. — Property of decedents' estates.
- 2193. — Goods in possession or under control of or consigned to merchants, factors, or manufacturers.
- 2194. — Property in custody of agent or depositary.
- 2195. — Property in custody of the law.
- 2196. — Occupancy or possession.
- 2197. — Joint or several ownership or possession.
- 2198. — Partnership property.
- 2199. — Unoccupied or unseated land.
- 2200. Property of nonresidents or aliens.
- 2201. — In general.
- 2202. — Property held in trust or other fiduciary capacity.
- 2203. — Property in custody of agent.
- 2204. — Property taxed or located in another state.
- 2205. — Property temporarily in state or in transit.
- 2206. — Nonresident lands.
- 2207. — Credits, investments, and securities in general.
- 2208. — Possession or control, of resident agent or trustee, of investments or securities.
- 2209. — Securities held by nonresident in another state.
- 2210. — Mortgages.
- 2211. Situs of property.
- 2212. — In general.
- 2213. — Decedents' and other estates under ancillary administration.
- 2214. — Property temporarily within jurisdiction.
- 2215. — Property in transit.
- 2216. — Property taxed in other jurisdiction.
- 2217. Tax on actions or proceedings therein.

III. PROPERTY TAXES.(Cont'd)

- 2218. Tax on transfers and registration of instruments.
- 2219. Contracts to assume and pay taxes.
- 2220. Conveyances and contracts to evade taxation.
- 2221. Persons or property erroneously left untaxed.
- 2222. Property sold or forfeited to state on nonpayment of tax.
- 2223. Estoppel to dispute liability.

(D) CORPORATIONS AND CORPORATE STOCK AND PROPERTY.

- 2225. In general.
- 2226. Nature and grounds of liability.
- 2227. — In general.
- 2228. — Time when liability attaches, and amount of tax.
- 2229. Statutory provisions.
- 2230. Corporations and associations subject to taxation in general.
- 2231. Classification for purpose of taxation.
- 2232. Corporate property in general.
- 2233. Corporate franchises and privileges.
- 2234. Capital and stock.
- 2235. — In general.
- 2236. — Nature and taxation otherwise of property represented.
- 2237. Corporate business, earnings, or receipts.
- 2238. Shares of stockholders.
- 2239. Dividends and surplus.
- 2240. Corporate indebtedness and securities.
- 2241. Ownership and possession of property.
- 2242. Financial institutions.
- 2243. Insurance companies; premiums and receipts.
- 2244. Express and other transportation companies.
- 2245. Railroads.
- 2246. Telecommunication companies.
- 2247. Electric companies.
- 2248. Gas companies.
- 2249. Mining companies.
- 2250. Water companies.
- 2251. Manufacturing corporations.
- 2252. Business corporations.
- 2253. Foreign corporations.
- 2254. — In general.

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III. PROPERTY TAXES.(Cont'd)

- 2255. — Carrying on business within state.
- 2256. — Franchises and privileges.
- 2257. — Property in general.
- 2258. — Capital employed or invested within state.
- 2259. — Earnings or receipts.
- 2260. Shares in foreign corporations.
- 2261. Securities issued by foreign corporations.
- 2262. Stock or property erroneously left untaxed.
- 2263. Estoppel to dispute liability.

(E) PUBLIC PROPERTY AND INSTITUTIONS.

- 2265. In general.
- 2266. Constitutional and statutory provisions.
- 2267. Public property and rights and interests therein.
- 2268. — In general.
- 2269. — Entries and sales.
- 2270. — Possessory rights.
- 2271. — Grants.
- 2272. — Improvements.
- 2273. Indian lands and other property.
- 2274. Property of state or municipality.
- 2275. — In general.
- 2276. — Public improvements and works.
- 2277. — Public buildings and institutions.
- 2278. — Property held or used for other than public purpose.
- 2279. Property dedicated to public use.
- 2280. Agencies and instrumentalities of government in general.
- 2281. Offices and fees and salaries of public officers.
- 2282. Bonds or other securities issued by state or municipality.

(F) EXEMPTIONS.

1. IN GENERAL.

- 2285. In general.
- 2286. Power to exempt in general.
- 2287. Constitutional provisions.
- 2288. — In general.
- 2289. — Effect of requirement of equality and uniformity.
- 2290. — Restrictions on exemptions.

III. PROPERTY TAXES.(Cont'd)

- 2291. — Grants of exemptions or of authority to exempt.
- 2292. Statutory provisions in general.
- 2293. Exemptions in corporate charters.
- 2294. Exemption by limitation of amount of tax.
- 2295. Exemption by commutation of tax.
- 2296. Delegation of power to exempt.
- 2297. Surrender of power to exempt.
- 2298. Construction and operation of exemptions in general.
- 2299. — In general.
- 2300. — General rules of construction.
- 2301. — Commencement of exemptions.
- 2302. — Compliance with conditions of acquiring exemption.
- 2303. Irrevocability of exemptions.
- 2304. — In general.
- 2305. — Exemptions in corporate charters.
- 2306. — Reservation of power to alter or amend.
- 2307. — Consideration.
- 2308. Revocation or other termination.
- 2309. Nature or use of property exempt in general.
- 2310. Amount of exemption and value of property.
- 2311. Public property in general.
- 2312. Public lands granted in aid of railroads or other improvements.
- 2313. Property of United States.
- 2314. Bonds or other securities issued by United States.
- 2315. Property of local government or other public corporations.
- 2316. Bonds or other securities issued by state or municipality.
- 2317. Property of individuals in general.
- 2318. Improvements on land.
- 2319. Crops and other products of the soil.
- 2320. Domestic animals.
- 2321. Household goods.
- 2322. Tools and implements of trade.
- 2323. Professional books and instruments.
- 2324. Pension and bounty money.
- 2325. Financial institutions.
- 2326. Insurance companies and policies.
- 2327. Railroad companies and property.

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III. PROPERTY TAXES.(Cont'd)

- 2328. Telecommunications companies.
- 2329. Mines and mining claims and companies.
- 2330. Water rights, waterworks, and irrigation and other water companies.
- 2331. Manufacturing companies.
- 2332. — In general.
- 2333. — Machinery, materials, and other property.
- 2334. — Corporate capital and stock in general.
- 2335. — Foreign corporations and capital and property thereof.
- 2336. Money, investments, or securities of nonresidents.
- 2337. Charitable or benevolent institutions, and property used for charitable purposes in general.
- 2338. — In general.
- 2339. — Character, purpose, and activities of institutions; incidence of benefits.
- 2340. — Character, extent, and ownership of property.
- 2341. — Occupation and use of property.
- 2342. — Property leased or otherwise used for profit.
- 2343. Health care facilities and institutions.
- 2344. Beneficial associations.
- 2345. Schools, colleges and universities, and property used for educational purposes.
- 2346. — In general.
- 2347. — Nature, ownership, occupancy, or use of property in general.
- 2348. — Contiguity of property.
- 2349. — Residences of officers, professors, and teachers.
- 2350. — Property leased or otherwise used for profit.
- 2351. — Trust and endowment funds.
- 2352. — Public or charitable character of institution.
- 2353. — Public schools and colleges.
- 2354. Libraries, museums, and collections for purposes of science or art.
- 2355. Religious societies and institutions, and property used for religious purposes.
- 2356. Cemeteries and burial grounds and lots.
- 2357. Taxes affected by exemptions.

III. PROPERTY TAXES.(Cont'd)

- 2358. Transfer of exemption or of property exempt.
- 2359. Consolidation of exempt corporation with others.
- 2360. Waiver of or estoppel to claim exemption.
- 2361. Acquisition of exempt property to evade taxation.

2. PROCEEDINGS TO ESTABLISH AND ENFORCE EXEMPTION.

- 2365. In general.
- 2366. Proceedings before board or officer.
- 2367. — In general.
- 2368. — Jurisdiction.
- 2369. — Application.
 - (1). In general.
 - (2). Time.
 - (3). Sufficiency.
- 2370. — Mode and course of procedure in general.
- 2371. — Parties.
- 2372. — Standing; right of review.
- 2373. — Matters considered; scope of issues.
- 2374. — Determination and relief.
- 2375. — Further administrative review.
- 2376. Judicial review and intervention.
- 2377. — In general.
- 2378. — Time.
- 2379. — Parties.
- 2380. — Standing; right of review or action.
- 2381. — Preservation and reservation in lower tribunal; exhaustion.
- 2382. — Matters considered; scope of issues.
- 2383. — De novo review.
- 2384. — Presumptions.
- 2385. — Discretion.
- 2386. — Questions of law or fact.
- 2387. — Harmless error.
- 2388. — Determination and relief; injunction.
- 2389. Subsequent review.
- 2390. Evidence.
- 2391. — In general.
- 2392. — Presumptions and burden of proof.

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III. PROPERTY TAXES.(Cont'd)

- 2393. — Admissibility.
- 2394. — Weight and sufficiency.
- 2395. Questions of law or fact.

(G) PLACE OF TAXATION.

- 2400. In general.
- 2401. Constitutional and statutory provisions.
- 2402. Real property.
- 2403. Personal property.

(H) LEVY AND ASSESSMENT.

1. IN GENERAL.

- 2410. In general.
- 2411. Nature of levy.
- 2412. Powers of legislature.
- 2413. Powers of county or other local authorities.
- 2414. Making of levy by legislature.
- 2415. Apportionment to counties or other subdivisions.
- 2416. Making of levy by local authorities.
- 2417. Requisites and validity of levy in general.
- 2418. — In general.
- 2419. — Certificate as to rate or amount voted or required, and estimate of expenditures.
- 2420. — Time and place of making levy.
- 2421. — Notice of levy.
- 2422. — List or assessment on which tax is levied.
- 2423. — Record and evidence of levy.
- 2424. — Defects and objections and liabilities arising therefrom.
- 2425. Ascertainment and statement of amount of levy.
- 2426. Statement of purpose of tax.
- 2427. Specification of items and amount thereof.
- 2428. Determination of rate of taxation.

2. ASSESSORS AND PROCEEDINGS FOR ASSESSMENT.

- 2430. In general.
- 2431. Nature and necessity of assessment.
- 2432. Statutory provisions.
- 2433. Appointment, qualification, and tenure of assessors.
- 2434. — In general.

III. PROPERTY TAXES.(Cont'd)

- 2435. — State boards and officers.
- 2436. — Local boards and officers.
- 2437. — Deputies and assistants.
- 2438. Compensation of assessors.
- 2439. Authority to make assessment.
- 2440. — In general.
- 2441. — Corporations and corporate property in general.
- 2442. — Railroads.
- 2443. Time and date of assessment.
- 2444. Powers and proceedings in making assessments in general.
- 2445. — In general.
- 2446. — Defects and errors.
- 2447. Determination as to persons and property taxable.
- 2448. Determination as to ownership or possession of property.
- 2449. Determination as to place of taxation.
- 2450. Liabilities for negligence or misconduct.
- 2451. Liabilities on official bonds.
- 2452. Criminal responsibility.

3. MODE OF ASSESSMENT IN GENERAL.

- 2460. In general.
- 2461. Statutory provisions.
- 2462. List or statement by taxpayer.
- 2463. — In general.
- 2464. — Necessity in general.
- 2465. — Notice or demand.
- 2466. — Making and requisites in general.
- 2467. — Description of property or other subject-matter.
- 2468. — Statement of debts to be deducted.
- 2469. — Omissions and defects.
- 2470. — Operation and effect in general.
- 2471. — Prosecution for failure to make, or for making false list or statement.
- 2472. Proceedings by assessors for discovery and valuation of property.
- 2473. — In general.
- 2474. — Proceedings on failure to make or making false list or statement.
- 2475. — Discovery and inspection.
- 2476. Nature or ownership of property.
- 2477. — In general.

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III. PROPERTY TAXES.(Cont'd)

- 2478. — Real property in general.
- 2479. — Unoccupied or unseated land.
- 2480. — Land of nonresidents.
- 2481. — Separate parcels of land.
- 2482. — Personal property in general.
- 2483. — Property of decedents' estates.

4. MODE OF ASSESSMENT OF CORPORATE STOCK, PROPERTY, OR RECEIPTS IN GENERAL.

- 2490. In general.
- 2491. Duties of assessors in general.
- 2492. Statutory provisions.
- 2493. Report or statement by corporation.
- 2494. — In general.
- 2495. — Property, capital, and liabilities.
- 2496. — Business, earnings, receipts, and dividends.
- 2497. — List of stockholders.
- 2498. — List of holders of securities.
- 2499. — Foreign corporations.
- 2500. — Conclusiveness and effect.
- 2501. Proceedings for discovery and valuation of property.
- 2502. — In general.
- 2503. — By state boards or officers.
- 2504. — By local assessors.

5. VALUATION OF PROPERTY.

- 2510. In general.
- 2511. Transfers.
- 2512. Real property in general.
- 2513. — In general.
- 2514. — Matters considered and methods of valuation in general.
- 2515. — Market value and sale price; comparable sales.
- 2516. — Replacement cost; depreciation and obsolescence.
- 2517. — Capitalized income.
- 2518. — Appurtenances, easements, and improvements.
- 2519. — Interests less than fee in general; leasehold interests.
- 2520. Valuation of particular real property.
- 2521. — In general.
- 2522. — Platted or unplatted property.
- 2523. — Rural or agricultural lands; open spaces.

III. PROPERTY TAXES.(Cont'd)

- 2524. — Timber and timber lands.
- 2525. — Mineral or mining property.
- 2526. — Utilities in general.
- 2527. — Water supply property; dams.
- 2528. Deduction of encumbrances on real property.
- 2529. Personal property in general.
- 2530. Credits, investments, and securities.
- 2531. Increase of valuation of taxpayer.
- 2532. Increase on failure of taxpayer to make list or statement.
- 2533. Tax on registration of instrument.
- 2534. Deduction of indebtedness in general.
- 2535. — In general.
- 2536. — From credits.
- 2537. — Nonresidents.
- 2538. Acknowledgment or incurrence of indebtedness to evade taxation.
- 2539. Valuation of corporate franchises and privileges.
- 2540. — In general.
- 2541. — Deduction of tangible property and indebtedness.
- 2542. — Deduction of property outside of state.
- 2543. — Apportionment of assessment.
- 2544. Valuation of corporate capital.
- 2545. — In general.
- 2546. — Actual, cash, or market value of stock.
- 2547. — Property forming basis of valuation in general.
- 2548. — Deduction of value of property not taxable.
- 2549. — Deduction of value of property otherwise taxed.
- 2550. — Deduction of indebtedness.
- 2551. Determination of amount of corporate earnings or receipts.
- 2552. Determination of amount of dividends.
- 2553. Valuation of shares of stock.
- 2554. Valuation of corporate securities.
- 2555. Financial institutions.
- 2556. — In general.
- 2557. — Valuation of shares.
- 2558. Insurance companies, policies, surplus, and other funds.
- 2559. Express and other transportation companies.

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III. PROPERTY TAXES.(Cont'd)

- 2560. Railroads.
- 2561. Telecommunication companies.
- 2562. Foreign corporations.
- 2563. Shares in foreign corporations.
- 2564. Increase of valuation in report or statement of corporation.
- 2565. Increase of valuation on failure to make report or statement.
- 2566. Deduction of indebtedness of holders of stock or securities.
- 2567. Amendment or alteration by assessors in general.
- 2568. Addition by assessors of persons or property omitted.
- 2569. Additional or supplemental assessment and original assessment of property omitted.
- 2570. Actions and other judicial proceedings to compel assessment or payment of tax on omitted property.
- 2571. Reassessment.
- 2572. Notice of assessment.
- 2573. Corporate stock, property, or receipts.
 - (1). In general.
 - (2). Addition of property or other subject-matter omitted.
 - (3). Additional or supplemental assessment, and original assessment of property omitted.
 - (4). Notice of assessment.

6. ASSESSMENT ROLLS OR BOOKS.

- 2575. In general.
- 2576. Nature and necessity.
- 2577. Authority and duty to make.
- 2578. Making and requisites in general.
- 2579. Form and arrangement.
- 2580. Designation of persons.
- 2581. — In general.
- 2582. — Owner or occupant of property.
- 2583. — Estate, heirs, or representatives of decedent.
- 2584. — Owners or others unknown.
- 2585. Designation of corporations or holders of corporate stock or securities.
- 2586. Description of property.
- 2587. — In general.
- 2588. — Real property.

III. PROPERTY TAXES.(Cont'd)

- 2589. — Separate listing of unoccupied or unseated lands and lands of nonresidents.
- 2590. — Personal property in general.
- 2591. — Credits and securities.
- 2592. — Corporate property, stock, and securities.
- 2593. Extending amount of tax.
- 2594. — In general.
- 2595. — Statement of amounts of separate taxes and total tax.
- 2596. Certification or other authentication in general.
- 2597. Signatures.
- 2598. Affidavit or other verification.
- 2599. Return.
- 2600. Filing or record.
- 2601. Making and requisites of duplicate rolls or lists.
- 2602. Omissions.
- 2603. Amendment or alteration.
- 2604. Curative statutes.
- 2605. Effect of invalidity.
- 2606. Partial invalidity.
- 2607. Presumptions as to validity.
- 2608. Custody, care, and use of records.
- 2609. Access to rolls or books.
- 2610. Construction and operation in general.
- 2611. Conclusiveness and effect.

7. EQUALIZATION OF ASSESSMENTS.

- 2620. In general.
- 2621. State boards of equalization and state tax commissions.
- 2622. Nature and necessity.
- 2623. Constitutional and statutory provisions.
- 2624. Equalization among taxing or assessment districts by county or other local board or officer.
- 2625. — In general.
- 2626. — Method of equalizing assessments.
- 2627. — Record of proceedings, decision, and certification.
- 2628. — Proceedings to compel equalization.
- 2629. — Review of proceedings.

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III. PROPERTY TAXES.(Cont'd)

- 2630. Equalization among counties or other municipalities by state board or officer.
- 2631. — In general.
- 2632. — Method of equalizing assessments.
- 2633. — Construction, operation, and conclusiveness of decisions.
- 2634. — Review of proceedings.

8. REVIEW, CORRECTION, OR SETTING ASIDE OF ASSESSMENT IN GENERAL.

- 2640. Nature and scope of remedies in general.
- 2641. Constitutional and statutory provisions.
- 2642. Exclusiveness of statutory remedy.
- 2643. Assessments reviewable.
- 2644. Grounds of review.
- 2645. — In general.
- 2646. — Defects or irregularities in proceedings.
- 2647. — Error as to valuation or amount.
- 2648. Right of review.
- 2649. — In general.
- 2650. — Persons entitled.
- 2651. — Effect of failure to make list or statement of property.
- 2652. — Estoppel or waiver.
- 2653. Creation and organization of board of review or other special tribunal.
- 2654. Authority and powers of board or officer.
- 2655. — In general.
- 2656. — Assessment of persons, property, or other matters omitted.
- 2657. — Change of valuation or amount of tax in general.
- 2658. — Increase of valuation or tax.
- 2659. — Reduction of valuation or abatement of tax.
- 2660. — Remission of tax.
- 2661. — Amendment or correction of defects in proceedings.
- 2662. — Setting aside assessment.
- 2663. — Reassessment.
- 2664. Place and time of meeting of board.
- 2665. Notice to public of meeting or sessions of board.

III. PROPERTY TAXES.(Cont'd)

- 2666. Time for application to board or officer.
- 2667. Mode and course of procedure in general.
- 2668. Notice to persons interested.
- 2669. — In general.
- 2670. — Necessity.
- 2671. — Requisites and sufficiency.
- 2672. — Persons notified.
- 2673. — Waiver of notice or objections thereto.
- 2674. Complaint or petition of persons aggrieved.
- 2675. Answer or other mode of objection.
- 2676. Hearing.
- 2677. Scope and extent of relief.
- 2678. Rendition, form, and requisites of decision.
- 2679. Record of proceedings.
- 2680. Conclusiveness and effect of decision.
- 2681. Making and mode of correction of assessment.
- 2682. Setting aside assessment and making of reassessment.

9. ARBITRATION OR ALTERNATIVE DISPUTE RESOLUTION.

- 2685. In general.

10. JUDICIAL REVIEW OR INTERVENTION.

- 2690. In general.
- 2691. Review of board by courts.
- 2692. — In general.
- 2693. — Jurisdiction.
- 2694. — Time of taking proceedings.
- 2695. — Decisions reviewable and right of review.
- 2696. — Presentation and reservation before board or officer of grounds of review.
- 2697. — Conditions precedent in general; payment of tax and filing of bond.
- 2698. — Exhaustion of remedies.
- 2699. — Proceedings for review and parties.
 - (1). In general.
 - (2). Process and notice.
 - (3). Parties.
 - (4). Pleading.

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III. PROPERTY TAXES.(Cont'd)

- (5). Trial de novo.
- (6). Scope and extent of review.
- (7). — In general.
- (8). — Questions of fact.
- (9). — Questions of law.
- (10). — Mode of review.
- (11). Determination and relief.
- 2700. Further judicial review.
- 2701. — In general.
- 2702. — Decisions reviewable and right of review.
- 2703. — Presentation and reservation before reviewing court.
- 2704. — Scope of review.
- 2705. — De novo review.
- 2706. — Determination and relief.
- 2707. Other judicial remedies.
- 2708. — In general.
- 2709. — Jurisdiction and powers of courts in general.
 - (1). In general.
 - (2). Change of valuation.
 - (3). Setting aside assessment and striking tax from roll.
 - (4). Assessment of omitted property.
 - (5). Mode of correction.
- 2710. Certiorari to review assessment.
- 2711. Mandamus to correct assessment.
- 2712. Injunction to restrain assessment.
- 2713. Actions to reduce assessment or abate tax.
- 2714. Actions to set aside assessment or for reassessment.

11. EVIDENCE IN GENERAL.

- 2720. In general.
- 2721. Admissibility.
- 2722. Presumptions.
- 2723. Burden of proof.
- 2724. Weight and sufficiency of evidence.
- 2725. — In general.
- 2726. — Classification of property.
- 2727. — Persons and property subject to taxation.
- 2728. — Valuation.
- 2729. — Inequality or discrimination.

(I) LIEN AND PRIORITY.

- 2730. In general.
- 2731. Statutory provisions.
- 2732. Creation and requisites of lien.
- 2733. — In general.
- 2734. — Validity and sufficiency of assessment.
- 2735. — Entry of unpaid tax and tax books or other records.
- 2736. Property to which lien attaches.
- 2737. Time when lien attaches.
- 2738. Priorities in general.
- 2739. Priority as to pre-existing liens or encumbrances.
- 2740. Transfer of property in general.
- 2741. Judicial sale of property.
- 2742. Duration and termination of lien in general.
- 2743. Loss or discharge of lien.
- 2744. Protection of lien.

(J) PAYMENT AND REFUNDING OR RECOVERY OF TAX PAID.

- 2750. In general.
- 2751. Notice, demand, and opportunity for payment as conditions precedent.
- 2752. Persons by whom payment may be made.
- 2753. Payment of proportionate share of tax assessed on land in gross.
- 2754. Duty of corporation as to payment of tax on stock, indebtedness, or securities.
- 2755. — In general.
- 2756. — Bank shares, dividends, and deposits.
- 2757. Payment from fund in court or property in custody of the law.
- 2758. Officers to whom payment may be made.
- 2759. Place for payment.
- 2760. Time for payment.
- 2761. Mode of making and medium of payment.
- 2762. Amount of payment.
- 2763. Interest and fees.
- 2764. Receipts and certificates.
- 2765. Evidence of payment.
- 2766. Operation and effect of payment in general.

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III. PROPERTY TAXES.(Cont'd)

- 2767. Rights, as against persons or property liable, of other persons making payment.
- 2768. — In general.
- 2769. — Right to lien.
- 2770. Effect of failure to pay.
- 2771. — In general.
- 2772. — Excuses for nonpayment.
- 2773. Refunding taxes paid.
- 2774. Redemption of stamps.
- 2775. Right of recovery of taxes paid.
- 2776. — In general.
- 2777. — Voluntary payment in general.
- 2778. — Mistake of law.
- 2779. — Mistake of fact.
- 2780. — Duress or compulsion.
- 2781. — Protest.
- 2782. Actions and proceedings for recovery of taxes paid.
- 2783. — In general.
- 2784. — Nature and form of remedy.
- 2785. — Conditions precedent.
- 2786. — Time to sue and limitations.
- 2787. — Persons entitled to sue and persons liable.
- 2788. — Parties.
- 2789. — Pleading.
- 2790. — Evidence.
- 2791. — Trial, relief awarded, and amount of recovery.
- 2792. — Appeal.

(K) COLLECTION AND ENFORCEMENT AGAINST PERSONS OR PERSONAL PROPERTY.

1. IN GENERAL.

- 2800. In general.
- 2801. Nature of power to enforce collection.
- 2802. Statutory provisions.
- 2803. Appointment, qualification, and tenure of collectors.
- 2804. Authorization and qualification of other officers as collectors.
- 2805. Deputies and assistants of collectors.
- 2806. Compensation of collectors and other officers.
- 2807. Authority to collect in general.
- 2808. Authority to collect arrears.

III. PROPERTY TAXES.(Cont'd)

- 2809. Authority to collect interest, penalties, and fees.
- 2810. Authority to compromise or remit.
- 2811. Delivery of assessment roll or tax list or duplicate.
- 2812. Warrant for collection.
- 2813. Tax bills.
- 2814. Receipt, custody, and care of taxes collected.
- 2815. Accounting as to and payment over of taxes collected.
- 2816. — In general.
- 2817. — Conclusiveness of settlement.
- 2818. Return of list or warrant.
- 2819. — In general.
- 2820. — Delinquent list.
- 2821. Rights and liabilities as to taxes uncollected.
- 2822. Liabilities for official acts in general.
- 2823. Warrant or other authority as protection from liability.
- 2824. Liabilities for negligence or misconduct in general.
- 2825. Failure to pay over taxes collected.
- 2826. Summary remedies against defaulting officers.
- 2827. Actions against defaulting officers.
- 2828. Liabilities on official bonds.
- 2829. Summary remedies on official bonds.
- 2830. Actions on official bonds.
- 2831. Criminal responsibility.

2. SUMMARY REMEDIES AND ACTIONS.

- 2835. In general.
- 2836. Statutory provisions.
- 2837. Personal liability for taxes assessed on specific property.
- 2838. Summary remedies against personal property in general.
- 2839. Taxes for which property may be seized and sold.
- 2840. Property subject to seizure and sale.
- 2841. Issuance and requisites of tax execution or other process against property.
- 2842. Levy of warrant, execution or other process.
- 2843. Release or delivery of property on giving security.

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III. PROPERTY TAXES.(Cont'd)

- 2844. Claims by third persons to property seized.
- 2845. Assignment of tax execution.
- 2846. Distress and proceedings thereon.
- 2847. Sale of personal property.
- 2848. Actions for unpaid taxes.
- 2849. — In general.
- 2850. — Nature and form.
- 2851. — Rights of action.
- 2852. — Conditions precedent.
- 2853. — Defenses.
- 2854. — Jurisdiction and venue.
- 2855. — Time to sue and limitations.
- 2856. — Parties.
- 2857. — Process and appearance.
- 2858. — Pleading.
- 2859. — Evidence.
- 2860. — Trial.
- 2861. — Judgment and relief.
- 2862. — Appeal and error.
- 2863. — Costs and fees.
- 2864. Actions to enforce lien on personal property.
- 2865. Proceedings supplementary to process against property.
- 2866. Rule or order to show cause why tax should not be paid.
- 2867. Attachment or other process against the person.
- 2868. Criminal prosecutions.

3. REMEDIES FOR WRONGFUL ENFORCEMENT.

- 2871. Nature and scope of remedies in general.
- 2872. Statutory provisions.
- 2873. Injunction.
- 2874. — In general.
- 2875. — Grounds of relief in general.
- 2876. — Illegal tax.
- 2877. — Invalid levy.
- 2878. — Defects in assessment.
 - (1). In general.
 - (2). Excessive or unequal assessment or valuation.
 - (3). Assessment of persons or property not liable.
 - (4). Defects or errors in proceedings for collection.

III. PROPERTY TAXES.(Cont'd)

- 2879. — Special grounds of equity jurisdiction.
 - (1). In general.
 - (2). Adequacy of remedy at law in general.
 - (3). Remedy in proceedings for assessment.
 - (4). Avoidance of multiplicity of suits.
 - (5). Prevention of cloud on title.
- 2880. — Conditions precedent in general.
- 2881. — Payment or tender of taxes not in controversy.
- 2882. — Proceedings and relief.
- 2883. — Preliminary injunction.
- 2884. Recovery of possession of property seized or sold.
- 2885. Actions for damages.

(L) SALE OF LAND FOR NONPAYMENT OF TAX.

- 2900. In general.
- 2901. Constitutional and statutory provisions.
- 2902. Taxes and charges for which land may be sold.
- 2903. — In general.
- 2904. — Validity of tax.
- 2905. — Regularity of levy and assessment.
- 2906. — Different taxes and taxes for different years.
- 2907. — Interest, penalties, and fees.
- 2908. — Partial illegality.
- 2909. Demand of payment and default of owner.
- 2910. Exhaustion of personalty before recourse to realty.
- 2911. List of lands delinquent.
- 2912. — In general.
- 2913. — Necessity.
- 2914. — Making and requisites.
- 2915. — Verification and certification.
- 2916. — Filing.
- 2917. — Publication.
- 2918. Real property subject to sale.
- 2919. Sale of lands of persons under disabilities, nonresident, or unknown.
- 2920. Enforcement against real property of personal judgment.
- 2921. Enforcement of lien on real property.

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III. PROPERTY TAXES.(Cont'd)

- 2922. Proceedings for judgment against real property.
- 2923. — In general.
- 2924. — Nature and form.
- 2925. — Grounds and conditions precedent.
- 2926. — Defenses.
- 2927. — Jurisdiction and venue.
- 2928. — Time to sue and limitations.
- 2929. — Parties.
- 2930. — Process or notice and appearance.
- 2931. — Pleading.
- 2932. — Evidence.
- 2933. — Trial or hearing.
- 2934. — Decision.
- 2935. — Form and requisites, and vacation or amendment of judgment or decree.
- 2936. — Conclusiveness of adjudication, and collateral attack.
- 2937. — Review.
- 2938. — Costs and fees.
- 2939. Warrant, execution, or other process against real property.
- 2940. Restraining sale.
- 2941. Officers authorized to sell.
- 2942. Mode of sale.
- 2943. Place of sale.
- 2944. Time of sale.
- 2945. Notice of sale.
- 2946. — In general.
- 2947. — Necessity.
- 2948. — Persons to be notified, and form, requisites, and validity of notice.
- 2949. — Designation or description of property.
- 2950. — Personal notice to owner or occupant.
- 2951. — Publication.
- 2952. — Posting.
- 2953. — Proof.
- 2954. Postponement or adjournment.
- 2955. Amount for which land may be sold.
- 2956. — In general.
- 2957. — Part of total amount delinquent.
- 2958. — Sale for excessive amount.
- 2959. — Sale for amount including unauthorized charges and fees.

III. PROPERTY TAXES.(Cont'd)

- 2960. Estate or interest which may be sold.
- 2961. Quantity of land which may be sold.
- 2962. Sale in parcels.
- 2963. Conduct of sale in general.
- 2964. Terms and conditions of sale.
- 2965. Persons who may purchase.
- 2966. Amount required to purchase.
- 2967. Bids or applications to purchase.
- 2968. Combinations among or fraud of bidders.
- 2969. Private sale of lands unsold at public sale.
- 2970. Purchase by state or municipality, and resale.
- 2971. — In general.
- 2972. — Proceedings for purchase.
- 2973. — Operation and effect of purchase.
- 2974. — Waiver or abandonment of purchase.
- 2975. — Resale.
 - (1). In general.
 - (2). Application to purchase and proceedings thereon.
 - (3). Terms and conditions of sale and amount required to purchase.
- 2976. Payment of price.
- 2977. Disposition of proceeds.
- 2978. — In general.
- 2979. — Surplus.
- 2980. Report or return and record of sale.
- 2981. — In general.
- 2982. — Making and requisites.
- 2983. — Affidavit of disinterestedness.
- 2984. — Operation and effect, and amendment.
- 2985. Confirmation by court.
- 2986. Certificate of sale.
- 2987. Certificate of delinquency issued to person paying taxes.
- 2988. Curative statutes.
- 2989. Setting aside sale or certificate.
- 2990. — In general.
- 2991. — Grounds, conditions precedent, and time for proceedings.
- 2992. — Proceedings, relief granted, and review.
- 2993. — Resale.
- 2994. Fees and expenses of sale.

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III. PROPERTY TAXES.(Cont'd)

- 2995. Collateral attack on sale.
- 2996. Presumptions as to validity.
- 2997. Wrongful sale.

(M) REDEMPTION FROM TAX SALE.

- 3000. In general.
- 3001. Right to redeem and necessity of redemption in general.
- 3002. Constitutional and statutory provisions.
- 3003. Persons entitled to redeem.
- 3004. — In general.
- 3005. — Redemption of homestead.
- 3006. — Minors and others under disability.
- 3007. — Owners in general.
- 3008. — Mortgagees.
- 3009. — Purchasers.
- 3010. Waiver, estoppel, and laches.
- 3011. Time for redemption.
- 3012. Notice to redeem.
- 3013. — In general.
- 3014. — Nature and necessity.
- 3015. — Persons who may give notice.
- 3016. — Persons entitled to notice.
- 3017. — Form and requisites.
- 3018. — Service in general.
- 3019. — Publication.
- 3020. — Proof.
- 3021. Actions to foreclose right of redemption.
- 3022. — In general.
- 3023. — Time to sue and limitations.
- 3024. — Parties.
- 3025. — Process or notice.
- 3026. — Pleading and evidence.
- 3027. — Judgment or decree, and review.
- 3028. — Costs and fees.
- 3029. Amount required to redeem.
- 3030. — In general.
- 3031. — Interest and penalties.
- 3032. — Subsequent taxes.
- 3033. Payment or tender.
- 3034. Proceedings on redemption.
- 3035. Report or list of redemptions.
- 3036. Certificate of redemption.
- 3037. Defects, objections, and waiver.
- 3038. Failure to redeem.
- 3039. — In general.

III. PROPERTY TAXES.(Cont'd)

- 3040. — Excuses for delay or defects.
- 3041. — Mistake or fault of officer.
- 3042. — Fraud of purchaser.
- 3043. — Refusal to allow redemption.
- 3044. Redemption by agreement or act of parties.
- 3045. Actions to redeem in general.
- 3046. — In general.
- 3047. — Nature and rights of action.
- 3048. — Jurisdiction, limitations, and parties.
- 3049. — Pleading and evidence.
- 3050. — Judgment and review.
- 3051. Statutory actions to redeem after execution of tax deed.
- 3052. Disposition of redemption money.
- 3053. Operation and effect.

(N) TAX TITLES.

1. TITLE AND RIGHTS OF PURCHASER AT TAX SALE.

- 3060. In general.
- 3061. Nature and effect of sale as transfer in general.
- 3062. Statutory provisions.
- 3063. Property and rights passing by sale.
- 3064. Estate or interest acquired by purchaser or holder of certificate of sale.
- 3065. — In general.
- 3066. — Purchase from state.
- 3067. Liens and encumbrances on property in general.
- 3068. Other taxes on property.
- 3069. Effect of defects or irregularities in levy or assessment, judgment, decree, or sale.
- 3070. — In general.
- 3071. — Assessment.
 - (1). In general.
 - (2). Ownership of property.
 - (3). Description of property.
 - (4). Property not taxable.
- 3072. — Proceedings for enforcement.
 - (1). In general.
 - (2). Proceedings preliminary to sale in general.
 - (3). Judgment or foreclosure of lien.
 - (4). Notice of sale.

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III. PROPERTY TAXES.(Cont'd)

- (5). Conduct and return of sale.
3073. — Amendment of records or proceedings.
3074. — Bona fide purchasers.
3075. Possession by purchaser.
3076. Loss of title by failure to take or retain possession, or by adverse possession.
3077. Trees and timber.
3078. Rents and profits and waste.
3079. Lien for purchase money in general.
3080. Liabilities of purchasers.
3081. Assignees of certificates of sale.
3082. Grantees of purchasers.

2. TAX DEEDS.

3085. In general.
3086. Necessity and nature in general.
3087. Statutory provisions.
3088. Authority and duty to make.
3089. Right to deed.
3090. Conditions and prerequisites.
3091. Time of issuance or of making application for deed.
3092. Notice of application for deed.
3093. Application for deed, and proceedings thereon.
3094. Restraining making or delivery.
3095. Mandamus or other proceeding to compel making or delivery.
3096. Form and contents in general.
3097. Parties.
3098. Recitals.
3099. — In general.
3100. — Levy and assessment of tax.
3101. — Delinquency.
3102. — Proceedings preliminary to sale.
3103. — Sale.
3104. — Consideration, and proceedings subsequent to sale.
3105. Property which may be included.
3106. Description of property.
3107. — In general; necessity and sufficiency.
3108. — Certainty.
3109. — Variance between deed and prior tax proceedings.
3110. Execution.
3111. Acknowledgment.

III. PROPERTY TAXES.(Cont'd)

3112. Delivery.
3113. Recording and registration.
3114. Amendment or reformation.
3115. Curative statutes.
3116. Cancellation by public officers.
3117. Construction.
3118. Property conveyed.
3119. Estate or interest created.
3120. — In general.
3121. — Fee simple.
3122. — Term of years.
3123. — Transfer of interest of person assessed.
3124. — Deed from state.
3125. Effect as to interests not assessed or sold.
3126. Effect as to liens and encumbrances on property in general.
3127. Effect as to other taxes on property.
3128. Priorities of successive tax deeds.
3129. Effect as evidence in general.
3130. — In general.
3131. — Validity and construction of statutory provisions in general.
3132. — Presumptions and burden of proof as to prerequisites.
3133. Effect as to title.
3134. — In general.
3135. — Validity and construction of statutory provisions in general.
3136. — Evidence of title dependent on preliminary or supplementary proof.
3137. — Presumptions and rebuttal thereof.

3. ACTIONS TO CONFIRM OR TRY TITLE.

3140. In general.
3141. Nature and form of remedies in general.
3142. Statutory provisions.
3143. Right of action by claimant under tax title for possession of property.
3144. Right of action to confirm or quiet tax title.
3145. Defenses against claimant under tax title.
3146. Payment or deposit of amount of taxes or purchase money as condition precedent to defense against tax title.

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III. PROPERTY TAXES.(Cont'd)

- 3147. Right to attack tax title in general.
- 3148. — In general.
- 3149. — Estoppel and ratification.
- 3150. — Title necessary to contest tax title.
- 3151. — Mortgagee.
- 3152. Right of action against claimant under tax title for possession of property.
- 3153. Right of action to set aside tax sale, certificate, or deed.
- 3154. Right of action to remove cloud on title by tax sale or deed.
- 3155. Tender or deposit of amount of taxes or purchase money as condition precedent to attack on tax title.
- 3156. — In general.
- 3157. — Necessity of payment into court and sufficiency of tender.
- 3158. Jurisdiction and venue.
- 3159. Time to sue, limitations, and laches.
- 3160. — In general.
- 3161. — Actions by claimant under tax title.
- 3162. — Actions against claimant under tax title.
 - (1). In general.
 - (2). Sufficiency of deed or title to set statute in operation, and defects cured by limitation.
 - (3). Defects in assessment, levy, and sale, and effect of redemption or payment of tax.
 - (4). Record of deed and possession of land.
- 3163. Parties.
- 3164. Joinder or intervention of claimants in actions by others.
- 3165. Process and appearance.
- 3166. Pleading.
- 3167. — In general.
- 3168. — Complaint, petition, or bill.
- 3169. — Answer and reply.
- 3170. — Amendments and supplemental pleadings.
- 3171. — Issues, proof, and variance.
- 3172. Evidence.
- 3173. — In general.
- 3174. — Presumptions and burden of proof.
- 3175. — Admissibility.

III. PROPERTY TAXES.(Cont'd)

- 3176. — Weight and sufficiency.
- 3177. Trial or hearing.
- 3178. Scope and extent of relief.
- 3179. — In general.
- 3180. — Payment of taxes or reimbursement of purchase money.
 - (1). In general.
 - (2). Defect or irregularity avoiding sale.
 - (3). Amount to be paid.
 - (4). Lien.
- 3181. — Compensation for improvements.
- 3182. Judgment or decree and enforcement thereof.
- 3183. Appeal.
- 3184. Costs.

4. RIGHTS AND REMEDIES OF PURCHASER OF INVALID TITLE.

- 3190. In general.
 - 3191. Nature of right to relief.
 - 3192. Statutory provisions.
 - 3193. Refunding or recovery of purchase money from state, county, or other municipality.
 - 3194. — In general; authority and duty to reimburse.
 - 3195. — Grounds and extent of liability.
 - 3196. — Persons entitled to reimbursement.
 - 3197. — Actions and proceedings to enforce claims.
 - 3198. — Operation and effect of refunding.
 - 3199. Lien for taxes or purchase money.
 - 3200. Reimbursement by owner.
 - 3201. — In general.
 - 3202. — Taxes delinquent, interest, penalties, and costs.
 - 3203. — Purchase money or amount required to redeem.
 - 3204. — Taxes paid subsequent to sale.
 - 3205. — Actions.
 - 3206. Compensation for improvements.
- #### (O) FORFEITURES AND PENALTIES.
- 3210. In general.
 - 3211. Nature and power to impose.
 - 3212. Statutory provisions.

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III. PROPERTY TAXES.(Cont'd)

- 3213. Grounds in general.
- 3214. Penalties for failure to make list, report, or statement.
- 3215. Penalties for making false list, report, or statement.
- 3216. Penalties for nonpayment of tax in general.
- 3217. Penalties imposed in actions for unpaid taxes.
- 3218. Interest on penalties.
- 3219. Persons liable for penalties.
- 3220. Remission of penalties.
- 3221. Proceedings for penalties.
- 3222. Forfeiture of land delinquent.
- 3223. — In general.
- 3224. — Failure to list or report land.
- 3225. — Nonpayment of tax.
- 3226. — Failure of bidders at tax sale.
- 3227. — Proceedings for enforcement.
- 3228. — Operation and effect.
- 3229. — Redemption.
- 3230. — Remission or waiver.
- 3231. — Sale or other disposition of lands forfeited.
- 3232. Crimes and prosecutions.

(P) DISPOSITION OF TAXES COLLECTED, AND FAILURE OF LOCAL AUTHORITIES TO COLLECT.

- 3235. In general.
- 3236. Duty of local authorities to collect or account in general.
- 3237. Statutory provisions.
- 3238. Taxes collected by state.
- 3239. General taxes collected by county, city, or other municipality.
- 3240. — In general.
- 3241. — Rights of state.
- 3242. — Rights as between county and city or other taxing or collection district.
 - (1). In general.
 - (2). Application to bonded debt.
 - (3). Interest.
 - (4). Actions to recover taxes collected.
- 3243. Interest, penalties, and costs collected.
- 3244. Liabilities of county, city, or other collection district for taxes uncollected.

III. PROPERTY TAXES.(Cont'd)

- 3245. Proceedings for apportionment, accounting, and settlement.
- 3246. Payment and application thereof.

IV. EXCISE TAXES IN GENERAL.

- 3249. In general.
- 3250. Constitutional and statutory provisions.
- 3251. What is an "excise tax"; other taxes and fees distinguished.
- 3252. Merchandise or commodities subject to excise tax.
- 3253. Assessment.
- 3254. Lien and priority.
- 3255. Payment.
- 3256. Refunding or recovery of tax paid.
- 3257. Collection and enforcement.
- 3258. Penalties, forfeitures, crimes, and offenses.
- 3259. Disposition.

V. EMPLOYMENT TAXES AND WITHHOLDING IN GENERAL.

- 3260. In general.
- 3261. Statutory provisions.
- 3262. — In general.
- 3263. — Validity.
- 3264. State and federal issues in general.
- 3265. Approval and certification of state laws by federal authorities.
- 3266. Reciprocal arrangements with other state or federal authorities.
- 3267. Construction.
- 3268. Nature of contributions exacted.
- 3269. Employments subject to tax in general.
- 3270. Tests of employment.
- 3271. — In general.
- 3272. — Performance of services for wages, hire, remuneration, etc.
- 3273. Persons and employing units liable in general.
- 3274. — In general.
- 3275. — Employing units or businesses controlled by same interests.
- 3276. Employers, who are.
- 3277. — In general.
- 3278. — Successors.
- 3279. Election and termination of coverage.
- 3280. Employees, who are.
- 3281. — In general.

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V. EMPLOYMENT TAXES AND WITHHOLDING IN GENERAL.(Cont'd)

- 3282. — Employees of employees.
- 3283. — Employees of subcontractors hired to do ordinary work of employing units.
- 3284. — Employees of independent contractors.
- 3285. Independent contractors.
- 3286. Employments not taxable in general.
- 3287. — In general.
- 3288. — Agricultural.
- 3289. — Charitable, educational, literary, or scientific.
- 3290. — On vessels.
- 3291. Assessment.
 - (1). In general.
 - (2). Rate.
 - (3). Matters considered.
 - (4). Time.
 - (5). Evidence.
 - (6). — In general.
 - (7). — Presumptions and burden of proof.
 - (8). — Weight and sufficiency.
 - (9). Proceedings.
- 3292. Lien and priority.
- 3293. Payment.
- 3294. Refunding or recovery of tax paid.
- 3295. Collection and enforcement.
- 3296. Penalties, forfeitures, crimes, and offenses.
- 3297. Disposition.

VI. LEGACY, INHERITANCE AND TRANSFER TAXES.

- 3300. In general.
- 3301. Nature and power to impose.
- 3302. — In general.
- 3303. — Indians and their property.
- 3304. Statutory provisions.
- 3305. — In general.
- 3306. — Purpose.
- 3307. — Constitutionality.
 - (1). In general.
 - (2). Equality and uniformity in general.
 - (3). Exemption or classification based on amount or value of estate or property.

VI. LEGACY, INHERITANCE AND TRANSFER TAXES.(Cont'd)

- (4). Exemptions or classifications based on relationship of parties.
- (5). Exemption of bequests for charitable or religious purposes.
- (6). Limitation of tax to personal property.
- (7). Retroactive provisions.
- (8). Tax on transfers of corporate stock.
- 3308. — Construction and operation in general.
- 3309. — Retroactive operation.
- 3310. — Amendment and repeal.
- 3311. What law governs.
- 3312. Preemption.
- 3313. Local ordinances.
- 3314. Administrative agencies in general.
- 3315. Rules and regulations in general.
- 3316. Property liable.
- 3317. — In general.
- 3318. — Nature of property.
- 3319. — Particular estates or interests.
- 3320. — Property of nonresidents or aliens.
- 3321. — Situs of property.
 - (1). In general.
 - (2). Effect of liability of property to tax in another state.
- 3322. — Property passing under law of state imposing tax.
- 3323. Transfers of property not subject of or exempt from general taxation.
- 3324. Exemptions.
- 3325. — In general.
- 3326. — Amount or value of estate disposed of or distributed.
- 3327. — Relationship of parties.
 - (1). In general.
 - (2). Children by adoption.
 - (3). Mutually acknowledged relation of parent and child.
- 3328. — Charitable, educational, religious, or other public corporations, institutions, or purposes.
 - (1). In general.
 - (2). Charitable corporations and institutions.

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**VI. LEGACY, INHERITANCE AND
TRANSFER TAXES.(Cont'd)**

- (3). Educational corporations and societies.
- (4). Religious corporations and societies.
- (5). Nations and lesser municipal entities.
- (6). Foreign corporations.
- 3329. — Proceedings to establish exemptions.
- 3330. Transfers subject to tax.
- 3331. — In general.
- 3332. — Mode and form in general.
 - (1). In general.
 - (2). Execution of power of appointment.
- 3333. — In contemplation of or intended to take effect at or after death.
 - (1). In general.
 - (2). Transfers of stocks and securities.
- 3334. — In discharge of debt or other obligation.
- 3335. — Transfers to evade or defeat tax.
- 3336. Estates or interests created by transfer.
- 3337. — In general.
- 3338. — Life estates.
- 3339. — Remainders and other future estates.
- 3340. — Commissions or other compensation of executors or trustees.
- 3341. Rate of taxation.
- 3342. Time when tax accrues.
- 3343. Persons liable for tax.
- 3344. — In general.
- 3345. — Executors, administrators, and trustees.
- 3346. — Provisions of will or other instrument.
- 3347. Collateral proceedings involving liability to tax.
- 3348. Authority and duty to make assessment.
- 3349. Proceedings for assessment in general.
- 3350. Appraisal or other valuation.
- 3351. — In general.
- 3352. — Appointment, power and proceedings of appraiser.
- 3353. — Time for appraisal.

**VI. LEGACY, INHERITANCE AND
TRANSFER TAXES.(Cont'd)**

- 3354. — Valuation of stocks and securities.
- 3355. — Deductions in general.
- 3356. — Deduction of taxes and expenses of administration and litigation.
- 3357. — Operation and effect of appraisal and assessment.
- 3358. — Annuities and life estates.
- 3359. — Vested remainders and other future estates.
- 3360. — Contingent estates.
- 3361. Compromise or remission of tax.
- 3362. Review, correction, or setting aside of assessment.
- 3363. — In general.
- 3364. — Correction, amendment, or modification of assessment.
- 3365. — Setting aside of assessment.
- 3366. — Reappraisal.
- 3367. — Review of assessment.
- 3368. Interest.
- 3369. Lien and priority.
- 3370. Payment.
- 3371. Refunds of tax paid.
- 3372. Recovery of tax paid.
- 3373. Collection and enforcement.
- 3374. — In general.
- 3375. — Limitations.
- 3376. — Expenses of proceedings.
- 3377. Penalties, forfeitures, crimes, and offenses.
- 3378. Disposition.

VII. GIFT TAXES.

- 3380. In general.
- 3381. Nature and power to impose.
- 3382. Constitutional and statutory provisions.
- 3383. Property liable.
- 3384. Gifts or transfers taxable.
- 3385. Exemptions.
- 3386. Value of property gifts.
- 3387. Persons liable for tax.
- 3388. Assessment.
- 3389. Lien and priority.
- 3390. Payment.
- 3391. Refunding or recovery of tax paid.
- 3392. Collection and enforcement.

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VII. GIFT TAXES.(Cont'd)

- 3393. Penalties, forfeitures, crimes and prosecutions.
- 3394. Disposition.

VIII. INCOME TAXES.

(A) IN GENERAL.

- 3400. In general.
- 3401. Nature of tax.
- 3402. — In general.
- 3403. — Excise or property tax.
- 3404. Power to impose.
- 3405. — In general.
- 3406. — Residence of taxpayer; corporations.
- 3407. — Sources of income outside state.
- 3408. — Income of agencies and instrumentalities of United States in general.
- 3409. — Income of national banks, or from shares thereof.
- 3410. — Income from bonds or other securities or obligations of United States.
- 3411. — Compensation of United States officers and employees.
- 3412. — Indians.

(B) REGULATION.

- 3420. In general.
- 3421. Constitutional provisions in general.
- 3422. Statutory provisions and ordinances.
- 3423. — In general.
- 3424. — Purpose.
- 3425. — Construction and operation in general.
- 3426. Validity of statutes and ordinances.
- 3427. — In general.
- 3428. — Equality and uniformity in general.
- 3429. — Classification and discrimination in general.
- 3430. — Subjects of taxation in general.
- 3431. — Residence and source of income.
- 3432. — Deductions and credits.
- 3433. — Exemptions.
- 3434. — Rate of tax.
- 3435. — Double taxation.
- 3436. — Taxation according to value.

VIII. INCOME TAXES.(Cont'd)

- 3437. — Provisions for assessment and collection.
- 3438. — Disposition of taxes collected.
- 3439. — Retroactive operation.
- 3440. Amendment and repeal of statutes and ordinances.
- 3441. Retroactive operation.
- 3442. Administrative agencies and regulations.

(C) INCOMES TAXABLE.

- 3445. In general.
- 3446. Nature of income in general.
- 3447. Gross income.
- 3448. Net income.
- 3449. Time of earning or receiving as affecting taxability.
- 3450. Tax period and income attributable thereto.
- 3451. Source of income in general.
- 3452. Annuities.
- 3453. Erroneously or illegally acquired income.
- 3454. Salaries, wages, or compensation.
- 3455. — In general.
- 3456. — Public officers and employees.
- 3457. Dividends received.
- 3458. — In general.
- 3459. — Source of dividend as capital or profits.
- 3460. — Liquidating dividends.
- 3461. — Stock dividends.
- 3462. Interest received.
- 3463. Rents and royalties.
- 3464. Devises or bequests and income therefrom.
- 3465. Capital and capital increase.
- 3466. Gains and profits from sales or exchanges.
- 3467. — In general.
- 3468. — Sales of stocks or securities.
- 3469. — Exchanges.
- 3470. Reorganizations.
- 3471. Refund of taxes or duties.
- 3472. Sources of income outside state.
- 3473. — In general.
- 3474. — Sales or services.
- 3475. — Securities or other intangibles.

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VIII. INCOME TAXES.(Cont'd)

- 3476. — Nonresidents and foreign corporations.
- 3477. — Apportionment of income.

(D) PERSONS LIABLE.

- 3480. In general.
- 3481. Residence of taxpayer.
- 3482. — In general.
- 3483. — Residence during portion of tax period.
- 3484. Husbands or wives.
- 3485. Corporations in general.
- 3486. Foreign corporations.
- 3487. Partnerships.
- 3488. Religious, benevolent, scientific, educational, or other nonprofit corporations or associations.
- 3489. Unincorporated business.
- 3490. Municipalities.
- 3491. Estates and trusts.
- 3492. — In general.
- 3493. — Trusts in general.
- 3494. — Income accumulated or distributable currently.
- 3495. — Decedents' estates.

(E) DEDUCTIONS, CREDITS, AND EXEMPTIONS.

- 3500. Deductions.
- 3501. — In general.
- 3502. — Dividends.
- 3503. — Interest paid or accrued.
- 3504. — Estates and trusts.
- 3505. Expenses.
- 3506. — In general.
- 3507. — Ordinary and necessary expenses.
- 3508. — Trade or business.
- 3509. — Year or period in which deductible.
- 3510. Losses.
- 3511. — In general.
- 3512. — Trade or business and transactions for profit.
- 3513. — Sale, exchange or disposition of property.
- 3514. — Worthless debts, stocks or other property.
- 3515. — Year or period in which deductible.

VIII. INCOME TAXES.(Cont'd)

- 3516. Depreciation, depletion, obsolescence and exhaustion.
- 3517. Credits.
- 3518. Exemptions.
- 3519. — In general.
- 3520. — Reciprocal exemption of nonresidents.
- 3521. Other taxes paid.
- 3522. — In general.
- 3523. — Federal taxes.

(F) RATES OF TAXATION, SURTAXES, AND ADDITIONAL TAXES.

- 3525. In general.
- 3526. Gross income tax rates.
- 3527. Surtaxes.
- 3528. Additional taxes in general.
- 3529. Tax on dividends paid.

(G) ASSESSMENT.

- 3530. In general.
- 3531. Valuation of property.
- 3532. Determination of deductions and credits.
- 3533. Allocation to state of income and deductions.
- 3534. — In general.
- 3535. — Method of allocation.
- 3536. — Property or income and expenses allocable to state.
- 3537. Correction of assessment, reassessment or additional assessment.
- 3538. Accounting.
- 3539. Returns and reports.
- 3540. — In general.
- 3541. — Consolidated or separate corporate returns.
- 3542. Time for assessment and limitations.
- 3543. Evidence.
- 3544. — In general.
- 3545. — Weight and sufficiency.
- 3546. Relief against assessments.
- 3547. Administrative review.
- 3548. Judicial review.
- 3549. — In general.
- 3550. — Decisions reviewable, right of review and presentation of grounds of review.

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VIII. INCOME TAXES.(Cont'd)

- 3551. — Scope and extent of review in general.
- 3552. — Presumptions.
- 3553. Liens.

(H) PAYMENT.

- 3554. In general.
- 3555. Refunding taxes paid.
- 3556. Recovery of taxes paid.
- 3557. — In general.
- 3558. — Actions.

(I) COLLECTION AND ENFORCEMENT.

- 3560. In general.
- 3561. Actions for taxes.
- 3562. Remedies for wrongful enforcement.
- 3563. Penalties, forfeitures, offenses and prosecutions.
- 3564. Disposition.

IX. SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES.

(A) IN GENERAL.

- 3600. In general.
- 3601. Nature of taxes.
- 3602. — In general.
- 3603. — Use tax.
- 3604. — Gross receipts taxes.
- 3605. — Selective taxes in general.
- 3606. — Gasoline and motor fuel.
- 3607. Power to impose.
- 3608. — In general.
- 3609. — Territorial limitations; nonresidents.
- 3610. — Transactions involving United States, its agencies, or instrumentalities.
- 3611. — Municipalities; delegated power.
- 3612. — Indians and persons dealing with Indians on Indian lands.

(B) REGULATIONS.

- 3620. In general.
- 3621. Constitutional provisions.
- 3622. Statutory provisions and ordinances.
- 3623. — In general.
- 3624. — Purpose of acts and ordinances.
- 3625. Validity of acts and ordinances.

IX. SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES.(Cont'd)

- 3626. — In general.
- 3627. — Equality and uniformity in general.
- 3628. — Gasoline and motor fuel.
- 3629. — Cigarettes and tobacco products.
- 3630. — Double taxation.
- 3631. — Rate and amount of tax.
- 3632. — Assessment and collection provisions.
- 3633. — Disposition of taxes collected.
- 3634. Retroactivity.
- 3635. Administrative agencies and regulation.

(C) TRANSACTIONS TAXABLE IN GENERAL.

- 3636. In general.
- 3637. Subjects and exemptions in general.
- 3638. — In general.
- 3639. — Use tax.
- 3640. — Gross receipts taxes.
- 3641. Place of transfer or use.
- 3642. Nature of transaction in general.
- 3643. Consideration or profit.
- 3644. Bailment, loan, lease, rental, or license of personal property.
- 3645. Sale or service transaction.
- 3646. Retail sales; sales not for resale.
- 3647. Casual or isolated sales.
- 3648. Withdrawal or use of goods held for sale.
- 3649. Goods or property involved.
- 3650. — In general.
- 3651. — Food and beverages.
- 3652. Drugs, medicine, and medical devices.
- 3653. Information technology.
- 3654. Containers, wrappings, and shipping material.
- 3655. Purpose of use or consumption as affecting taxability.
- 3656. — In general.
- 3657. — Manufacturing or processing, use or consumption in; incorporation in new product.
- 3658. Services taxable.

(D) PERSONS SUBJECT TO OR LIABLE FOR TAX.

- 3660. In general.
- 3661. Buyer's or seller's liability.
- 3662. Retailers.

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IX. SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES.(Cont'd)

- 3663. Consumers.
- 3664. Clubs, co-operatives, and nonprofit organizations.
- 3665. Public authorities or officers.
- 3666. Carriers and public utilities.
- 3667. Contractors and persons dealing with contractors.
- 3668. — In general.
- 3669. — Public contracts.
- 3670. Nonresidents and foreign corporations.
- 3671. Contracts as to payment.

(E) RATE AND AMOUNT OF TAX.

- 3672. In general.
- 3673. Sale price or value as tax basis.
- 3674. — In general.
- 3675. — Discounts and refunds; trade-ins.
- 3676. — Taxes paid.
- 3677. — Labor or service charges: transportation charges.

(F) SELECTIVE TAXES.

- 3678. In general.
- 3679. Cigarettes and tobacco products.
- 3680. Gasoline and motor fuel.
- 3681. — In general.
- 3682. — Transactions and products taxable.
- 3683. — Persons subject to or liable for tax in general.
- 3684. — Public authorities, officers, or instrumentalities.
- 3685. — Rate and amount.

(G) LEVY AND ASSESSMENT.

- 3686. In general.
- 3687. Correction of assessment, reassessment, or additional assessment.
- 3688. Accounting, returns, and reports.
- 3689. Time for assessment and limitations.
- 3690. Evidence.
- 3691. — In general.
- 3692. — Presumptions and burden of proof.
- 3693. — Weight and sufficiency.
- 3694. Administrative review.

IX. SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES.(Cont'd)

- 3695. Judicial review and relief against assessments.
- 3696. Liens.

(H) PAYMENT.

- 3697. In general.
- 3698. Bonds or other security.
- 3699. Refunding taxes paid.
- 3700. — In general.
- 3701. — Gasoline or motor fuel tax.
- 3702. Recovery of taxes paid.
- 3703. — In general.
- 3704. — Actions.

(I) COLLECTION AND ENFORCEMENT.

- 3705. In general.
- 3706. Collection by sellers or others.
- 3707. — In general.
- 3708. — Rights and liabilities as to taxes uncollected.
- 3709. Actions for taxes.
- 3710. Remedies for wrongful enforcement.
- 3711. Penalties and forfeitures.
- 3712. Offenses and prosecutions.
- 3713. Disposition of proceeds in general.
- 3714. Disposition of gasoline or motor fuel taxes.

372. TELECOMMUNICATIONS

SUBJECTS INCLUDED

The transmission of communications or entertainment at a distance, otherwise than by mail

More particularly, telegraphs, telephones, television, radio, wireless and mobile communications, satellite broadcasting and communications, computer communications, and other special services

Companies and associations engaged in this industry and their rights and liabilities peculiar to it

Government ownership, operation and regulation of such activities

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SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Commerce, regulation of, see COMMERCE
Corporations, matters applicable to in general, see CORPORATIONS AND BUSINESS ORGANIZATIONS
Defamation, liability for, see LIBEL AND SLANDER
Electricity used in telecommunications, injuries caused by, see ELECTRICITY
Eminent domain, see EMINENT DOMAIN
Gambling, offense of using telecommunications for, see GAMING
Mail, communication by, see POSTAL SERVICE
Municipalities' powers in general, see MUNICIPAL CORPORATIONS
Property rights in communications, see COPYRIGHTS AND INTELLECTUAL PROPERTY
Taxation of telecommunication facilities generally, see TAXATION

- I. IN GENERAL, ¶600-649.
- II. TELEGRAPHS, ¶650-724.
- III. TELEPHONES, ¶725-1024.
 - (A) IN GENERAL, ¶725-749.
 - (B) COMMISSIONS AND AGENCIES, ¶750-759.
 - (C) TELEPHONE COMPANIES, ¶760-779.
 - (D) FRANCHISES OR LICENSES AND RIGHTS OF WAY, ¶780-809.
 - (E) CONSTRUCTION, EQUIPMENT AND MAINTENANCE, ¶810-849.
 - (F) TELEPHONE SERVICE, ¶850-924.
 - (G) RATES AND CHARGES, ¶925-999.
 - (H) PENALTIES, ¶1000-1009.
 - (I) OFFENSES AND PROSECUTIONS, ¶1010-1024.
- IV. WIRELESS AND MOBILE COMMUNICATIONS, ¶1025-1074.
- V. TELEVISION AND RADIO BROADCASTING, ¶1075-1199.
- VI. CABLE TELEVISION, ¶1200-1274.
- VII. SATELLITE BROADCASTING AND COMMUNICATIONS, ¶1275-1309.
- VIII. COMPUTER COMMUNICATIONS, ¶1310-1399.
- IX. SPECIAL SERVICES OR ACTIVITIES, ¶1400-1425.

X. INTERCEPTION OR DISCLOSURE OF ELECTRONIC COMMUNICATIONS; ELECTRONIC SURVEILLANCE, ¶1426-1487.

- (A) IN GENERAL, ¶1426-1459.
- (B) AUTHORIZATION BY COURTS OR PUBLIC OFFICERS, ¶1460-1484.
- (C) TRACKING DEVICES, ¶1485-1487.

I. IN GENERAL.

- 600. In general.
- 601. Regulation in general.
- 602. Constitutional and statutory provisions.
- 603. — In general.
- 604. — Purpose.
- 605. — Validity.
- 606. — Retroactive operation.
- 607. What law governs.
- 608. Preemption; interplay of federal, state and local laws.
- 609. — In general.
- 610. — Rights of way regulation.
- 611. Common carrier or public utility status in general.
- 612. Commissions and agencies in general.
- 613. — In general.
- 614. — Powers and duties.
- 615. — Jurisdiction.
- 616. — Officers.
- 617. — Rules and regulations.
- 618. Telecommunication companies in general.
- 619. Franchises or licenses in general.
- 620. Franchise or license fees or taxes in general.
- 621. Construction, equipment and maintenance in general.
- 622. Telecommunication services in general.
- 623. Competition in general.
- 624. Rates and charges in general.
- 625. Government or public ownership or operation in general.
- 626. Evidence in administrative and judicial proceedings.
- 627. Administrative procedure in general.
- 628. — In general.
- 629. — Rulemaking.
- 630. — Investigations and reports.
- 631. — Hearing.

372. TELECOMMUNICATIONS

I. IN GENERAL.(Cont'd)

- 632. — Findings and orders; effect of decisions.
- 633. Judicial review or intervention in general.
- 634. — In general.
- 635. — Jurisdiction.
- 636. — Exhaustion of remedies.
- 637. — Injunction.
- 638. — Decisions reviewable.
- 639. — Presentation and reservation of grounds of review.
- 640. — Parties in general; standing.
- 641. — Time for proceedings; limitations.
- 642. — Pleading or petition.
- 643. — Record.
- 644. — Standard and scope of review.
- 645. — Determination and disposition; further review.

II. TELEGRAPHS.

- 650. In general.
- 651. Regulation in general.
- 652. Constitutional and statutory provisions.
- 653. What law governs.
- 654. Preemption; interplay of federal, state and local laws.
- 655. Common carrier or public utility status.
- 656. Commissions and agencies.
- 657. Telegraph companies.
- 658. — In general.
- 659. — Relations between companies in general; transfer of assets.
- 660. — Affiliation, consolidation and merger.
- 661. — Interconnection and mutual service; operating agreements.
- 662. — Leases between companies.
- 663. — Railroads operating lines or dealing with companies.
- 664. Government or public operation and ownership.
- 665. Franchises; right to construct and operate.
- 666. — In general.
- 667. — Federal franchise; use of public lands and navigable waters.
- 668. — State franchises.
- 669. — Local franchises or regulation; use of streets, roads or public places.

II. TELEGRAPHS.(Cont'd)

- 670. Right of way or other interest in private land; railroads.
- 671. Franchise or license fees or taxes.
- 672. Construction, equipment and maintenance.
- 673. — In general.
- 674. — Injuries or interference with highways.
- 675. — Changes and improvements; relocation and removal.
- 676. — Wrongful occupation of realty; trespass.
- 677. — Negligence in general.
- 678. — Injuries from wires and guy-wires.
- 679. — Poles and equipment thereon.
- 680. — Injuries to trespassers, children and persons working about wires.
- 681. — Injuries to land.
- 682. — Lines and equipment, injury to or interference with.
- 683. Telegraph service in general.
- 684. — In general.
- 685. — Contracts.
- 686. — Regulation, supervision and remedies.
 - (1). In general.
 - (2). Judicial review or intervention.
- 687. — Care and promptness in transmitting and delivery of messages in general.
- 688. — Forged or fraudulent messages.
- 689. — Hours and times of service; night messages.
- 690. — Illegal or improper purposes.
- 691. — Libelous and false messages.
- 692. — Offices and stations.
- 693. — Delivery of messages.
- 694. Charges and rates.
- 695. Negligent or erroneous transmittal or delivery of messages.
- 696. — In general.
- 697. — Proximate cause.
- 698. — Defenses and excuses; contributory negligence.
- 699. — Damages.
- 700. — Limitation or modification of liability.
- 701. — Companies and persons liable.
- 702. Actions.

372. TELECOMMUNICATIONS

II. TELEGRAPHS.(Cont'd)

- 703. — In general.
- 704. — Persons entitled to sue.
- 705. — Time to sue; limitations.
- 706. — Pleading.
- 707. — Issues, proof and variance.
- 708. — Evidence.
- 709. — Trial.
- 710. — Questions of law or fact.
- 711. — Instructions.
- 712. — Judgment.
- 713. — Costs and fees.
- 714. International messages.
- 715. Penalties.
- 716. Offenses and prosecutions.

III. TELEPHONES.

(A) IN GENERAL.

- 725. In general.
- 726. Regulation in general.
- 727. Constitutional and statutory provisions.
- 728. — In general.
- 729. — Purpose.
- 730. — Validity.
- 731. — Retroactive operation.
- 732. What law governs.
- 733. Preemption; interplay of federal, state and local laws.
- 734. — In general.
- 735. — Franchises or licenses and rights of way regulation.
- 735.5. — Service in general.
- 735.6. — Competition, agreements, and connections between companies.
- 735.7. — Long distance service.
- 735.8. — Rates and charges.
- 736. Common carrier or public utility status.

(B) COMMISSIONS AND AGENCIES.

- 750. In general.
- 751. Powers and duties.
- 752. Jurisdiction in general.
- 753. — In general.
- 754. — Interstate or intrastate.
- 755. Officers.
- 756. Rules and regulations in general.

(C) TELEPHONE COMPANIES.

- 760. In general.

III. TELEPHONES.(Cont'd)

- 761. Powers in general; corporate organization.
- 762. Finances and accounting.
- 763. Mortgages.
- 764. Loss of corporate franchise or dissolution; insolvency and reorganization.
- 765. Foreign corporations.
- 766. Cooperatives and mutual or nonprofit organizations.
- 767. — In general.
- 768. — Supervision by officers and commissions.
- 769. Relations between companies in general; transfer of assets.
- 770. Leases between companies.
- 771. Affiliation, consolidation and merger.
- 772. Government or public operation and ownership.
- 773. — In general.
- 774. — Federal emergency control.
- 775. Actions.

(D) FRANCHISES OR LICENSES AND RIGHTS OF WAY.

- 780. In general.
- 781. Right to construct and operate in general.
- 782. Federal franchise or certification.
- 783. State franchise, license or certificate; use of highways.
- 784. — In general.
- 785. — Territory to be served.
- 786. — Extended area service.
- 787. Local franchise or regulation; use of streets, roads or public places.
- 788. — In general.
- 789. — Necessity of local consent; effect of state franchise or statutory consent.
- 790. — Obtaining consent; procedure and imposition of conditions.
- 791. — Duration of grant; modification, revocation or renewal.
- 792. Private lines and lines incidental to other business.
- 793. Assignment or transfer of operation franchise or exchange.
- 794. Operation without franchise; remedies.
- 795. Right of way or other interest in private land.

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III. TELEPHONES.(Cont'd)

- 796. — In general.
- 797. — Railroad rights of way.
- 798. Franchise or license fees or taxes.
- 799. — In general.
- 800. — Power to exact and validity in general.
- 801. — Fees as barrier to entry or competition.
- 802. — Amount and computation.
- 803. Administrative procedure.
- 804. Judicial review or intervention.

(E) CONSTRUCTION, EQUIPMENT AND MAINTENANCE.

- 810. In general.
- 811. Regulation in general.
- 812. Sale or lease of equipment.
- 813. Injuries or interference with streets and highways in general.
- 814. Changes and improvements; relocation and removal.
- 815. Underground systems.
- 816. Adjoining landowners' and third persons' rights in general.
- 817. Work of construction and maintenance; contracts and liens.
- 818. Use of facilities by municipality and others.
- 819. — In general.
- 820. — Lines and poles.
- 821. Wrongful occupation of realty; trespass.
- 822. — In general.
- 823. — Nuisance, injunction and removal of equipment.
- 824. Negligence in general.
- 825. — In general.
- 826. — Actions.
- 827. Injuries from wires and guy-wires.
- 828. — In general.
- 829. — Actions in general.
- 830. — Evidence and fact questions.
- 831. Poles and equipment thereon.
- 832. — In general.
- 833. — Actions.
- 834. Injuries to trespassers, children and persons working about wires.
- 835. Injuries to land.
- 836. — In general.
- 837. — Trees and shrubs.

III. TELEPHONES.(Cont'd)

- 838. — Actions.
- 839. Lines and equipment, injury to or interference with.
- 840. — In general.
- 841. — Actions.
- 842. — Remedies; injunction.

(F) TELEPHONE SERVICE.

- 850. In general.
- 851. Company's regulations in general; tariffs.
- 852. Discrimination in general.
- 853. Particular matters relating to service in general.
- 854. Competition, agreements and connections between companies.
- 855. — In general.
- 856. — Negotiation, validity and approval of agreements.
- 857. — Duty to connect with other lines or furnish service thereto; collocation.
- 858. — Local access and transport area; dialing parity.
- 859. — Customer premises equipment.
- 860. — Access to unbundled network elements.
- 861. — Access to rights of way, ducts, conduits and poles.
 - (1). In general.
 - (2). Pole attachments.
- 862. — Access by wireless, mobile and internet service providers.
- 863. — Long distance or interexchange connection.
- 864. — Reciprocal compensation.
 - (1). In general.
 - (2). Internet service providers.
- 865. — Resale.
- 866. — Pricing, rates and access charges.
- 867. — Rural exemption.
- 868. — Number portability.
- 869. — Universal service.
- 870. — Proceedings.
 - (1). In general.
 - (2). Arbitration.
- 871. Contracts for service in general.
- 872. — In general.
- 873. — Long distance service.

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III. TELEPHONES.(Cont'd)

- 874. Negligence in providing service in general.
- 875. Directories and listing.
- 876. — In general.
- 877. — Right to numbers.
- 878. Directory assistance.
- 879. Emergency calls; 911.
- 880. Caller identification.
- 881. Extensions and private branch exchanges.
- 882. Suspension of service in general.
- 883. Restoration of service in general.
- 884. Illegal or improper purposes.
- 885. — In general.
- 886. — Gambling, lotteries and speculation.
 - (1). In general.
 - (2). Action of public officers; review and remedies.
- 887. — Indecent or obscene communications.
- 888. Advertising, canvassing and soliciting; telemarketing.
- 889. Customer privacy.
- 890. Public telephones or booths; resale of service.
- 891. Telephone answering and reference services.
- 892. Evidence in administrative or judicial proceedings.
- 893. Administrative procedure.
- 894. — In general.
- 895. — Notice.
- 896. — Investigations and reports.
- 897. — Hearing.
- 898. — Findings and orders.
- 899. Judicial review or intervention.
- 900. — In general.
- 901. — Jurisdiction.
 - (1). In general.
 - (2). Primary jurisdiction; administrative or judicial jurisdiction.
- 902. — Exhaustion of remedies.
- 903. — Injunction.
- 904. — Decisions reviewable.
- 905. — Presentation and reservation of grounds of review.
- 906. — Parties in general; standing.

III. TELEPHONES.(Cont'd)

- 907. — Time for proceedings; limitations.
- 908. — Pleading or petition.
- 909. — Record.
- 910. — Standard and scope of review.
- 911. — Determination and disposition; further review.
- 912. Civil liabilities and actions.
- 912.5. — In general.
- 913. — Damages resulting.
 - (1). In general.
 - (2). Notice of importance.
 - (3). Mental suffering; illness and death calls.
 - (4). Inadequate or excessive and exemplary damages.
- 914. — Limitation or modification of liability.
 - (1). In general.
 - (2). Directories and numbers.
- 915. — Defenses; grounds for refusal of service.
- 916. — Actions.
 - (1). In general.
 - (2). Persons entitled to sue.
 - (3). Pleading.
 - (4). Evidence.
 - (5). Trial.
 - (6). Questions of law or fact.
 - (7). Instructions.

(G) RATES AND CHARGES.

- 925. In general.
- 926. Regulation of rates in general.
- 927. Municipal regulation; franchises and contracts.
- 928. Filing of rates or tariffs.
- 929. — In general.
- 930. — Necessity.
- 931. — Filed rate doctrine in general.
- 932. — Effect on contracts, franchises and liabilities.
- 933. Reasonableness in general; confiscatory rates.
- 934. Discrimination.
- 935. Particular cases and problems in general.
- 936. Increases or decreases in rates in general.
- 937. Determination of rates.

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III. TELEPHONES.(Cont'd)

- 938. — In general.
- 939. — Allocation of items to areas or types of business.
 - (1). In general.
 - (2). Interstate or intrastate.
- 940. — Expenses.
 - (1). In general.
 - (2). Salaries, wages and employee benefits.
 - (3). Taxes.
- 941. — Financing costs; capital structure and interest.
- 942. — Rate base; property and revenues included.
- 943. — Rate of return.
- 944. — Relations with other companies; affiliates.
- 945. — Valuation.
 - (1). In general.
 - (2). Depreciation and reserve therefore.
 - (3). Reproduction cost; mode of estimating.
- 946. Particular types of service.
- 947. — In general.
- 948. — Installation and removal; extensions and special equipment.
- 949. — Toll or meter charges.
- 950. — Long distance or interexchange.
- 951. — Pay phones.
- 952. — Extended area service.
- 953. Particular types of subscriber.
- 954. — In general.
- 955. — Residential or business use.
- 956. Private branch exchanges; hotels.
- 957. — In general.
- 958. — Resale of services.
- 959. — Alternative operators.
- 960. Evidence as to rates.
- 961. — In general.
- 962. — Presumptions and burden of proof.
- 963. — Admissibility.
- 964. — Weight and sufficiency in general.
- 965. — Valuation and depreciation.
- 966. Administrative procedure.
- 967. — In general.
- 968. — Powers of commissions and agencies.

III. TELEPHONES.(Cont'd)

- 969. — Investigations, reports and discovery.
- 970. — Scope of inquiry.
- 971. — Notice and hearing.
- 972. — Rehearing.
- 973. — Findings and determination; modification and revocation.
- 974. Judicial review or intervention.
- 975. — In general.
- 976. — Jurisdiction.
 - (1). In general.
 - (2). Primary jurisdiction; administrative or judicial jurisdiction.
- 977. — Decisions and orders reviewable.
- 978. — Presentation and reservation of grounds of review.
- 979. — Persons entitled and parties.
- 980. — Time for proceedings; limitations.
- 981. — Exhaustion of remedies.
- 982. — Equitable relief; injunction.
- 983. — Temporary injunction and stay order.
- 984. — Pleading or petition.
- 985. — Record.
- 986. — Standard and scope of review; powers of court.
- 987. — Review of valuation and fact questions.
- 988. — Findings and determination; modification or vacation and further review.
- 989. Temporary, emergency or test rates; procedure.
- 990. Intercompany rates; division of tolls.
- 991. Liability for charges; payment and collection.
- 992. — In general.
- 993. — Refunds in connection with rate-making.
- 994. — Refusal of service for nonpayment.
- 995. — Directories.
- 996. — Unauthorized long distance calls.
- 997. — Actions and remedies.
 - (1). In general.
 - (2). Injunction.
 - (3). Recovery of overcharge.

(H) PENALTIES.

- 1000. In general.

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III. TELEPHONES. (Cont'd)

- 1001. Tariff or rate violations.
- 1002. Violations of rules or regulations concerning competition.
- 1003. Telemarketing violations.
- 1004. Actions for penalties.
- 1005. — In general.
- 1006. — Pleading.
- 1007. — Evidence and fact questions.

(I) OFFENSES AND PROSECUTIONS.

- 1010. In general.
- 1011. Offenses.
- 1012. — In general.
- 1013. — Telephone harassment and threats.
- 1014. — Wire fraud.
 - (1). In general.
 - (2). Nature and elements of offense in general.
 - (3). Knowledge and intent in general.
 - (4). Knowledge that communication be part of scheme; foreseeability.
 - (5). Success or possibility of success of scheme.
 - (6). Effectiveness of communication to further fraud.
 - (7). Injury from fraud.
 - (8). Nature of scheme or device in general.
 - (9). False pretenses or representations.
 - (10). Honest services fraud.
 - (11). Persons liable.
 - (12). Civil liabilities; actions.
- 1015. Prosecutions.
- 1016. — In general.
- 1017. — Indictment and information.
- 1018. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 1019. — Trial.
- 1020. — Questions of law or fact.
- 1021. — Instructions.
- 1022. — Sentencing and punishment.

IV. WIRELESS AND MOBILE COMMUNICATIONS.

- 1025. In general.
- 1026. Regulation in general.
- 1027. Constitutional and statutory provisions.
- 1028. — In general.
- 1029. — Purpose.
- 1030. — Validity.
- 1031. — Retroactive operation.
- 1032. What law governs.
- 1033. Preemption; interplay of federal, state and local laws.
- 1034. Common carrier or public utility status.
- 1035. Commissions and agencies.
- 1036. Licenses and authorizations.
- 1037. — In general.
- 1038. — Cellular telephones.
- 1039. — Personal communication services.
- 1040. — Specialized and commercial mobile radio.
- 1041. — Mobile satellite service.
- 1042. — Radio paging.
- 1043. License or authorization fees or taxes.
- 1044. Construction, equipment and maintenance; towers.
- 1045. — In general.
- 1046. — Local government regulation; proceedings.
- 1047. — Negligence.
- 1048. — Actions.
- 1049. Universal service.
- 1050. Competition, agreements and connections between companies.
- 1051. Contracts for service.
- 1052. Emergency calls; 911.
- 1053. Illegal or improper purposes.
- 1054. Administrative procedure.
- 1055. Judicial review or intervention.
- 1056. Civil liabilities and actions.
- 1057. — In general.
- 1058. — Damages resulting.
- 1059. — Limitation or modification of liability.
- 1060. — Defenses.
- 1061. — Actions.
- 1062. Rates and charges.
- 1063. — In general.
- 1064. — Liability for charges; payment and collection.

372. TELECOMMUNICATIONS

IV. WIRELESS AND MOBILE COMMUNICATIONS.(Cont'd)

- 1065. — Proceedings and review.
- 1066. Penalties.
- 1067. Offenses and prosecutions.

V. TELEVISION AND RADIO BROADCASTING.

- 1075. In general.
- 1076. Regulation in general.
- 1077. Constitutional and statutory provisions.
- 1078. — In general.
- 1079. — Purpose.
- 1080. — Validity.
- 1081. — Retroactive operation.
- 1082. What law governs.
- 1083. Preemption; interplay of federal, state and local laws.
- 1084. Common carrier or public utility status.
- 1085. Commissions and agencies.
- 1086. — In general.
- 1087. — Powers and duties in general.
- 1088. — Jurisdiction.
- 1089. — Officers.
- 1090. — Rules and regulations.
- 1091. License or permit in general.
- 1092. — In general.
- 1093. — Modification.
- 1094. — Renewal and revocation.
- 1095. Eligibility and qualifications for license.
- 1096. — In general.
- 1097. — Public interest, convenience or necessity in general.
- 1098. — Financial qualifications.
- 1099. — Character, citizenship and conduct.
 - (1). In general.
 - (2). Fraud, misstatements and concealment.
 - (3). Employment discrimination and equal opportunity.
- 1100. — Monopoly affecting license; multiple and cross ownership.
- 1101. — Newspapers and publishers; divestiture.
- 1102. — Mutually exclusive applications; factors considered.
 - (1). In general.
 - (2). Local ownership or control.
 - (3). Integration of ownership and control.

V. TELEVISION AND RADIO BROADCASTING.(Cont'd)

- (4). Diversity; minority ownership or control.
- 1103. — Particular cases and problems.
- 1104. Channels, frequencies and wavelengths.
- 1105. — In general.
- 1106. — Ultra high frequency.
- 1107. Aviation and navigation, matters relating thereto.
- 1108. Competition and interference.
- 1109. — In general.
- 1110. — Economic injury.
- 1111. — Particular cases and problems in general.
- 1112. — Allocation as to states, areas or populations served.
- 1113. — Time allocation and synchronization.
- 1114. Station and equipment; construction, removal and power increase.
- 1115. License fees or taxes.
- 1116. Transfer of station or license.
- 1117. — In general.
- 1118. — Security interest in station; rights of creditors.
- 1119. High definition television.
- 1120. Evidence in administrative or judicial proceedings.
- 1121. — In general.
- 1122. — Presumptions and burden of proof.
- 1123. — Admissibility.
- 1124. — Weight and sufficiency.
- 1125. Administrative procedure.
- 1126. — In general.
- 1127. — Investigations and reports.
- 1128. — Applications.
- 1129. — Notice and hearing.
- 1130. — Auctions, lotteries and competitive bidding.
- 1131. — Competitors' remedies; intervention and comparative hearing.
 - (1). In general.
 - (2). Incumbent challenges.
- 1132. — Findings and determination.
- 1133. — Rehearing and reconsideration.
- 1134. Judicial review or intervention.
- 1135. — In general.
- 1136. — Equitable relief; injunction.

372. TELECOMMUNICATIONS

V. TELEVISION AND RADIO BROADCASTING.(Cont'd)

- 1137. — Decisions reviewable.
- 1138. — Presentation and reservation of grounds of review.
- 1139. — Persons entitled and parties.
- 1140. — Exhaustion of administrative remedies.
- 1141. — Pleading and procedure.
- 1142. — Standard and scope of review in general.
- 1143. — Review of fact questions and expertise.
- 1144. — Determination and disposition; dismissal and further review.
- 1145. Effect of license in general.
- 1146. Government or publicly owned or funded stations in general.
- 1147. Programs.
- 1148. — In general.
- 1149. — Selection by broadcaster in general.
- 1150. — Particular subject matter.
 - (1). In general.
 - (2). Religious programs.
 - (3). Educational and children's programs.
- 1151. — Improper subject matter and censorship.
 - (1). In general.
 - (2). Indecent, obscene or violent material.
 - (3). Lotteries, gambling and speculation.
- 1152. — Licensing or transfer, programs as factor.
- 1153. — Political and controversial questions.
 - (1). In general.
 - (2). Fairness doctrine.
 - (3). Equal time rules.
 - (4). Personal attack rule.
 - (5). Government and publicly funded stations.
- 1154. — Purpose of program; advertising or noncommercial functions.
- 1155. — Remedies and procedure.
 - (1). In general.
 - (2). Injunction.
- 1156. Civil liabilities and actions.

V. TELEVISION AND RADIO BROADCASTING.(Cont'd)

- 1157. — In general.
- 1158. — Torts.
- 1159. — Contracts in general.
 - (1). In general.
 - (2). Ownership, control or transfer of station.
- 1160. — Programs and wrongful broadcasts.
- 1161. — Actions.
- 1162. Advertising contracts and rates.
- 1163. — In general.
- 1164. — Fraudulent billing.
- 1165. — Actions.
- 1166. Penalties.
- 1167. Offenses and prosecutions.
- 1168. — In general.
- 1169. — Unlicensed operators.
- 1170. — Prosecutions.
- 1171. International broadcasts.

VI. CABLE TELEVISION.

- 1200. In general.
- 1201. Regulation in general.
- 1202. Constitutional and statutory provisions.
- 1203. — In general.
- 1204. — Purpose.
- 1205. — Validity.
- 1206. — Retroactive operation.
- 1207. What law governs.
- 1208. Preemption; interplay of federal, state and local laws.
- 1209. Common carrier or public utility status.
- 1210. Commissions and agencies.
- 1211. Cable television companies in general.
- 1212. Government or public ownership or operation.
- 1213. Franchises and licenses; local regulation.
- 1214. — In general.
- 1215. — Franchise or license fees.
- 1216. — Renewal.
- 1217. — Termination and amendment.
- 1218. — Proceedings.
- 1219. Construction, equipment and maintenance in general.
- 1220. Rights of way to public or private property.

372. TELECOMMUNICATIONS

VI. CABLE TELEVISION.(Cont'd)

- 1221. — In general.
- 1222. — Use of streets, roads and public places.
- 1223. — Private property in general.
- 1224. — Apartments and multi-unit dwellings.
- 1225. — Utilization of other utility property.
 - (1). In general.
 - (2). Pole attachments.
 - (3). Rates and compensation.
- 1226. Discrimination.
- 1226.5. Contracts for service in general.
- 1227. Competition in general.
- 1228. Rates and charges.
- 1229. Program content; access rules.
- 1230. — In general.
- 1231. — Leased access.
- 1232. — Indecent, obscene or violent programs.
- 1233. Federal regulation.
- 1234. — In general.
- 1235. — Fees.
- 1236. — Competition and monopoly; multiple and cross ownership.
 - (1). In general.
 - (2). Telephone companies.
- 1237. — Disclosure, information and subscriber privacy.
- 1238. — Cable-broadcast relationships.
 - (1). In general.
 - (2). Distant signal rules.
 - (3). Retransmission.
 - (4). Must carry rules.
 - (5). Exclusivity rules.
 - (6). Non-duplication rules.
- 1239. Open video systems.
- 1240. Evidence in administrative or judicial proceedings.
- 1241. Administrative procedure.
- 1242. Judicial review or intervention.
- 1243. — In general.
- 1244. — Injunction.
- 1245. Civil liabilities and actions in general.
- 1246. — In general.
- 1247. — Torts.
- 1248. — Contracts.
 - (1). In general.

VI. CABLE TELEVISION.(Cont'd)

- (2). Ownership, control or transfer of company.
- 1249. — Actions.
- 1250. Civil liability for unauthorized interception or viewing.
- 1251. — In general.
- 1252. — Proceedings.
- 1253. — Damages and other relief.
- 1254. Offenses and prosecutions.
- 1255. — In general.
- 1256. — Unauthorized interception or viewing; descrambling.
- 1257. — Prosecutions.

VII. SATELLITE BROADCASTING AND COMMUNICATIONS.

- 1275. In general.
- 1276. Regulation in general.
- 1277. Constitutional and statutory provisions.
- 1278. What law governs.
- 1279. Preemption; interplay of federal, state and local law.
- 1280. Common carrier or public utility status.
- 1281. Satellite communication companies in general.
- 1282. Licenses and permits.
- 1283. License fees or taxes.
- 1284. Construction, equipment and maintenance in general.
- 1285. Restrictions on installation of reception equipment.
- 1286. Contracts and leases.
- 1287. Rates and charges.
- 1288. Competition in general.
- 1289. Channels; spectrum allocation.
- 1290. Access rules.
- 1291. Program content.
- 1292. Administrative procedure.
- 1293. Judicial review or intervention.
- 1294. Civil liabilities and actions in general.
- 1295. — In general.
- 1296. — Injunction.
- 1297. Civil liability for unauthorized interception or viewing.
- 1298. — In general.
- 1299. — Proceedings.
- 1300. — Damages and other relief.
- 1301. Penalties.

372. TELECOMMUNICATIONS

VII. SATELLITE BROADCASTING AND COMMUNICATIONS.(Cont'd)

1302. Offenses and prosecutions.

1303. — In general.

1304. — Unauthorized interception or viewing; descrambling.

1305. — Prosecutions.

VIII. COMPUTER COMMUNICATIONS.

1310. In general.

1311. Constitutional and statutory provisions.

1312. — In general.

1313. — Purpose.

1314. — Validity.

1315. — Retroactive operation.

1316. What law governs.

1317. Preemption; interplay of federal, state and local law.

1318. Common carrier or public utility status.

1319. Regulation in general.

1320. Internet service providers.

1321. — In general.

1322. — Telephone line interconnection.

1323. — Voice over internet protocol.

1324. — Cable television companies.

1325. — Wireless internet service.

1326. — Government or public operation and ownership.

1327. — Contracts for service.

1328. — Actions.

1329. Database availability.

1330. Domain names and numbers.

1331. — In general.

1332. — Registration.

1333. — Dispute resolution.

1334. — Actions.

1335. Privacy in general.

1335.5. Advertising and sales in general.

1336. Music and entertainment services and devices.

1336.5. Dating services.

1337. Administrative procedure.

1338. Judicial review or intervention.

1339. Civil liabilities; illegal or improper purposes.

1340. — In general.

1340.5. — Contracts.

1341. — Torts in general.

VIII. COMPUTER COMMUNICATIONS.(Cont'd)

1342. — Fraud; unauthorized access or transmission.

1343. — Unsolicited e-mail.

1344. — Persons and entities liable; immunity.

1345. — Damages and other relief.

1346. — Actions.

1347. Offenses and prosecutions.

1348. — In general.

1349. — Indecent or obscene communications in general.

1350. — Soliciting minor for sex or illegal act; child pornography.

1351. — Prosecutions.

IX. SPECIAL SERVICES OR ACTIVITIES.

1400. In general.

1401. Private line communications.

1402. Alarm and security systems.

1403. — In general.

1404. — Contracts in general.

1405. — Tort liability in general.

1406. — Limitation or modification of liability.

1407. — Actions.

1408. Messenger and delivery service.

1409. News and information.

1410. — In general.

1411. — Financial or market reports; tickers.

1412. Music and entertainment, transmission of.

1413. Teletype and telephoto services.

X. INTERCEPTION OR DISCLOSURE OF ELECTRONIC COMMUNICATIONS; ELECTRONIC SURVEILLANCE.

(A) IN GENERAL.

1426. In general.

1427. Constitutional and statutory provisions.

1428. — In general.

1429. — Purpose.

1430. — Validity.

1431. — Retroactive operation.

1432. What law governs.

1433. Preemption.

1434. Wiretapping in general.

373. TENANCY IN COMMON

X. INTERCEPTION OR DISCLOSURE OF ELECTRONIC COMMUNICATIONS; ELECTRONIC SURVEILLANCE.(Cont'd)

- 1435. Acts constituting interception or disclosure.
- 1436. — In general.
- 1437. — Telephone communications.
- 1438. — Wireless or mobile communications.
- 1439. — Computer communications.
- 1440. — Persons concerned; consent.
- 1441. Persons liable; immunity.
- 1442. Actions.
- 1443. — In general.
- 1444. — Jurisdiction and venue.
- 1445. — Parties in general; standing.
- 1446. — Time to sue and limitations.
- 1447. — Pleading.
- 1448. — Evidence.
- 1449. — Trial.
- 1450. — Questions of law or fact.
- 1451. — Judgment and relief.
- 1452. — Costs and fees.
- 1453. Offenses and prosecutions.

(B) AUTHORIZATION BY COURTS OR PUBLIC OFFICERS.

- 1460. In general.
- 1461. Executive authorization or application.
- 1462. Necessity for judicial approval; emergency interception.
- 1463. Judicial authorization in general.
- 1464. Application or affidavit.
- 1465. — In general.
- 1466. — Probable cause.
- 1467. — Competency of information; hearsay.
 - (1). In general.
 - (2). Information from others in general.
 - (3). Reliability or credibility; corroboration.
 - (4). Anonymous or confidential informants.
 - (5). Citizens, victims or officers.
- 1468. — Necessity; inadequacy of other procedures.
- 1469. — Identification of persons subject to interception.
- 1470. Order or warrant in general.

X. INTERCEPTION OR DISCLOSURE OF ELECTRONIC COMMUNICATIONS; ELECTRONIC SURVEILLANCE.(Cont'd)

- 1471. Conduct and duration of surveillance.
- 1472. — In general.
- 1473. — Scope; minimization.
- 1474. — Extension.
- 1475. Carrier's cooperation; pen registers and tracing.
- 1476. Reports; delivery and sealing.
- 1477. Notice and disclosure to parties.
- 1478. Use of information obtained.
- 1479. Review of proceedings; standing.

(C) TRACKING DEVICES.

- 1485. In general.
- 1486. Transponders or "beepers" in general; warrantless proceedings.
- 1487. Warrants or judicial authorization.

373. TENANCY IN COMMON

SUBJECTS INCLUDED

- Nature and incidents of the estate of two or more persons in the same property held by them by several and distinct titles
- Rights, powers, and liabilities of tenants in common
- Actions and other proceedings between, by, or against them
- Severance of the tenancy otherwise than by partition

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Joint estate of two or more persons held at the same time and in virtue of the same title, interest and possession, generally with right of survivorship, see JOINT TENANCY
- Partition of property held in common, see PARTITION
- Partners' rights in firm property, see PARTNERSHIP
- Spouses, cotenancy between, see MARRIAGE AND COHABITATION

373. TENANCY IN COMMON

Wills and deeds, creation of cotenancy by, see
DEEDS, WILLS

I. CREATION AND EXISTENCE, ¶1-9.

II. MUTUAL RIGHTS, DUTIES, AND LIABILITIES OF COTENANTS, ¶10-38.

III. RIGHTS AND LIABILITIES OF COTENANTS AS TO THIRD PERSONS, ¶39-55.

I. CREATION AND EXISTENCE.

1. Nature and incidents of cotenancy.
2. Constitutional and statutory provisions.
3. Creation of cotenancy.
4. Evidence of cotenancy.
5. Severance of cotenancy.
6. — In general.
7. — Agreements and conveyances between cotenants.
8. — Sales and conveyances to third persons.
9. Termination of cotenancy.

II. MUTUAL RIGHTS, DUTIES, AND LIABILITIES OF COTENANTS.

10. Nature of the relation.
11. Title and rights in general.
12. Amount of respective shares of cotenants.
13. Character and effect of possession of cotenant.
14. Disseisin.
15. Adverse possession.
 - (1). In general.
 - (2). Necessity of actual ouster or notice of adverse claim.
 - (3). Distinct and exclusive possession.
 - (4). Duration and continuity of possession.
 - (5). Hostile character of possession in general.
 - (6). Possession consistent with title of cotenant.
 - (7). Notice and knowledge of character of possession by cotenant.
 - (9). Payment of taxes and making improvements.
 - (10). Evidence.
 - (11). Questions for jury.
16. Presumption of grant.

II. MUTUAL RIGHTS, DUTIES, AND LIABILITIES OF COTENANTS.(Cont'd)

17. Acquisition of easement by cotenant.
18. Assertion of lien or charge.
19. Purchase of outstanding title or claim.
 - (1). In general.
 - (2). Nature and extent of rule.
 - (3). Purchase at judicial sale in general.
 - (4). Purchase at mortgage sale.
 - (5). Contribution to expense.
20. Acquisition of tax title.
 - (1). In general.
 - (2). Contribution to expense.
21. Enjoyment and use of property in general.
22. Mines and minerals.
23. Water rights.
24. Trees and timber.
25. Crops and other products of the soil.
26. Waste.
27. Conversion of personal property.
28. Rents and profits, and use and occupation.
 - (1). In general.
 - (2). Excess over proportionate share.
 - (3). Necessity and effect of disseisin, or of exclusive or adverse possession by cotenant.
 - (4). Extent of liability on accounting.
 - (5). Interest.
 - (6). Lien.
 - (7). Actions.
29. Repairs.
- 29.1. Improvements.
30. Incumbrances, taxes, and assessments.
31. Services, care, and management by cotenant.
32. Expenses and losses.
33. Agreements between cotenants.
34. Estoppel between cotenants.
35. Sales and conveyances to third persons.
36. Contribution.
37. Accounting.
38. Actions between cotenants.
 - (5). In general.
 - (1). Right of action in general.
 - (2). Nature and form.
 - (3). Conditions precedent.

374. TENDER

II. MUTUAL RIGHTS, DUTIES, AND LIABILITIES OF COTENANTS.(Cont'd)

- (4). Defenses.
- (5). Time to sue and limitations.

See also LIMITATION OF ACTIONS.

- (6). Parties.
- (7). Pleading.
- (8). Evidence.
- (9). Amount or items of recovery.
- (9.5). Instructions.
- (10). Questions for jury.
- (12). Verdict and findings.
- (13). Judgment.

III. RIGHTS AND LIABILITIES OF COTENANTS AS TO THIRD PERSONS.

- 39. Authority of cotenant in general.
- 40. Dedication to public use.
- 41. Creation of easement in favor of third person.
- 42. Sales and conveyances.
- 42.1. — In general.
- 43. — Common property in general.
- 44. — Undivided share.
- 45. — Specific amount.
- 46. Mortgages and liens.
- 47. Foreclosure of mortgage or lien.
- 48. Pledges.
- 49. Leases.
- 50. Licenses.
- 51. Contracts.
- 52. Advances for benefit of property.
- 53. Fraud of cotenant.
- 54. Estoppel by acts, conduct, or statements of cotenant.
- 55. Actions by or against cotenants.
 - (.5). In general.
 - (1). Right and form of action.
 - (2). Defenses.
 - (2.5). Time to sue and limitations.

See also LIMITATION OF ACTIONS.

- (3). Parties plaintiff.
- (4). Parties defendant.
- (5). Pleading.
- (6). Evidence.
- (7). Amount of recovery.
- (7.5). Questions for jury.
- (7.9). Instructions.

III. RIGHTS AND LIABILITIES OF COTENANTS AS TO THIRD PERSONS.(Cont'd)

- (8). Verdict and findings.
- (9). Judgment and execution.

374. TENDER

SUBJECTS INCLUDED

Offer of money or its equivalent in satisfaction of pecuniary obligations in general
Nature, requisites, sufficiency, and effect of such tender
Acceptance or refusal thereof, and payment into court incident thereto
Pleading tender

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Contracts, tender of performance, see **CONTRACTS, SPECIFIC PERFORMANCE** and specific topics relating to particular classes of contracts
Effect of tender on liabilities for—
Costs, see **COSTS**
Interest, see **INTEREST**
Money paid into court, disposition of, see **DEPOSITS IN COURT**

- 1. Nature and purpose in general.
- 3. Statutory provisions.
- 4. Necessity.
- 5. Waiver of tender.
- 6. Persons by whom tender may be made.
- 7. Persons to whom tender may be made.
- 8. Place.
- 9. Time.
- 10. Mode and sufficiency.
- 11. — In general.
- 12. — Amount.
 - (1). In general.
 - (2). Necessity that full amount due be offered.
 - (3). Tender of more than is due.
 - (4). Costs and interest.

374. TENDER

13. — Production and offer of money or equivalent.
 - (.5). In general.
 - (1). Necessity in general.
 - (2). Circumstances of offer.
 - (3). Readiness at place of payment.
 - (4). Deposit or money in possession of third person.
14. — Conditions.
 - (1). In general.
 - (2). Requiring receipt.
 - (3). Exacting change.
 - (4). Surrender of security or evidence of debt.
 - (5). Tender in full payment.
15. Objections, and making and waiver thereof.
 - (1). In general.
 - (2). Time for objection.
 - (3). Waiver of objection in general.
 - (4). Objections to amount.
 - (5). Objections for failure to produce money or equivalent.
 - (6). Objections to medium of tender.
16. Excuses for failure to make or insufficiency.
 - (1). In general.
 - (2). Refusal to accept.
 - (3). Excessive or unauthorized claim by creditor.
 - (4). Failure to produce money.
17. Acceptance.
18. Keeping good tender not accepted.
19. Operation and effect in general.
 - (1). In general.
 - (2). As admission or discharge of liability.
20. Effect of acceptance.
21. Effect of refusal.
22. Pleading.
23. Payment into court of amount tendered or admitted to be due.
 - 23.1. — In general.
24. — Necessity.
25. — Sufficiency.
26. — Operation and effect.
27. — Acceptance and effect thereof.
28. Evidence.
29. Questions for jury.

30. Instructions.
31. Verdict or findings.

375. TERRITORIES

SUBJECTS INCLUDED

Territory of the United States not contained within the boundaries of any of the several states

Powers of the national government over such territory and application of laws of the United States thereto

Establishment and organization of territorial governments, appointment of governors and other officers thereof, and rights, powers, proceedings, and liabilities of such governments, their officers and agents

Actions by or against territories

Relinquishment of sovereignty and grant of partial or complete independence

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Citizens in the territories and their rights in general, see ALIENS, IMMIGRATION, AND CITIZENSHIP, CIVIL RIGHTS, CONSTITUTIONAL LAW

Election of members of territorial legislatures and other territorial officers, see ELECTION LAW

Eminent domain, power and exercise thereof, see EMINENT DOMAIN

Public lands, see PUBLIC LANDS

States, admission of territories into Union as, see STATES

Taxation and revenue, see TAXATION

1. Territory belonging to United States before adoption of Constitution.
 - 1.1. — In general.
3. — Construction and operation of Ordinance of 1787 and other acts of Congress.
4. Power of United States to acquire and control additional territory.
5. Acquisition of territory.

377E. THREATS, STALKING, AND HARASSMENT

6. Construction and operation of treaties of cession.
7. Political status of territory acquired in general.
8. Application of Constitution and laws of United States to territory acquired.
9. Rights of persons and property in territory acquired.
10. Provisional or other temporary civil government.
11. Legislative power of Congress.
13. Political status and relations of organized territories.
14. Territorial extent and boundaries.
15. Construction and operation of organic act in general.
17. Governmental powers in general.
18. Application and operation in territories of acts of Congress.
19. Legislature.
20. Legislative power and exercise thereof in general.
22. Governor, and exercise of supreme executive authority.
23. Executive officers and agents.
25. Contracts in general.
28. Power to incur indebtedness or make expenditures.
29. Debts in general, appropriations, and payment.
31. Claims against territories.
32. Actions by or against territories.
33. Relinquishment of sovereignty.
34. Territorial courts.
Exclusive, concurrent, and conflicting jurisdiction, see COURTS *§*540.
35. — In general; establishment and organization.
36. — Jurisdiction and procedure in general.
37. — Courts of particular territories.
 - (1). In general.
 - (2). Puerto Rico.
 - (3). Virgin Islands.
 - (4). Guam.
 - (5). Northern Mariana Islands.
 - (6). American Samoa.
38. — Effect of admission of territory as state.

377E. THREATS, STALKING, AND HARASSMENT

SUBJECTS INCLUDED

Threats of personal violence in general
Threats to prevent performance or refusal to perform any act
Following or harassing another with intent to annoy, intimidate, or alarm that person
Nature and elements of these crimes
Nature and extent of criminal responsibility therefor, and grounds of defense
Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Blackmail, see EXTORTION
Civil liabilities for threats, see TORTS
Effect of duress by menaces on validity of particular transactions, see CONTRACTS, DEEDS, CANCELLATION OF INSTRUMENTS, and other specific topics
Employment and labor relations, effect of threats in, see LABOR AND EMPLOYMENT
Harassment and threats via telephone or other electronic device, see TELECOMMUNICATIONS
Harassment as violation of civil rights statutes, see CIVIL RIGHTS
Hate crimes and ethnic intimidation, see CIVIL RIGHTS VI
Intimidating or threatening witnesses, see OBSTRUCTING JUSTICE
Kill, threats to, see HOMICIDE
Mailing threatening matter, see POSTAL SERVICE
Particular offenses, threats as evidence of commission or as justification, see ASSAULT AND BATTERY, HOMICIDE, and other specific topics
Security to keep the peace, threats as ground for, see PROTECTION OF ENDANGERED PERSONS
Threats made with intent to obstruct justice, see OBSTRUCTING JUSTICE

1. In general.
2. Statutory provisions.
3. — In general.

377E. THREATS, STALKING, AND HARASSMENT

4. — Purpose.
5. — Validity.
6. — Retroactive operation.
7. Threats in general.
8. — In general.
9. — Nature of conduct.
10. — Intent; knowledge.
11. — Apprehension of harm.
12. — Federal offenses.
 - (1). In general.
 - (2). Nature of conduct.
 - (3). Intent; knowledge.
 - (4). Apprehension of harm.
 - (5). Interstate commerce.
13. Threats against officials or former officials.
14. — In general.
15. — Who is an official.
16. — Nature of conduct.
17. — Intent; knowledge.
18. — Apprehension of harm.
19. — Interstate commerce.
20. Harassment in general.
21. — In general.
22. — Nature of conduct.
23. — Intent; knowledge.
24. — Apprehension of harm.
25. Stalking in general.
26. — In general.
27. — Nature of conduct.
28. — Intent; knowledge.
29. — Apprehension of harm.
30. — Federal offenses.
 - (1). In general.
 - (2). Nature of conduct.
 - (3). Intent; knowledge.
 - (4). Apprehension of harm.
 - (5). Interstate commerce.
31. Degrees.
32. — In general.
33. — Aggravated stalking.
34. Attempts.
35. Defenses.
36. — In general.
37. — Consent.
38. — Protected activity.
39. Parties; aiding and abetting.
40. Indictment or information.
41. — In general.
42. — Requisites and sufficiency.
43. — Issues, proof, and variance.
44. Evidence.
45. — In general.
46. — Admissibility.
47. — Presumptions and burden of proof.
48. — Weight and sufficiency.
 - (1). In general.
 - (2). Threats in general.
 - (3). Harassment in general.
 - (4). Stalking.
49. Trial.
50. — In general.
51. — Questions of law or fact.
52. — Instructions.
53. Sentence and punishment.
54. — In general.
55. — Threats in general.
56. — Harassment in general.
57. — Stalking.

378. TIME

SUBJECTS INCLUDED

Measure of duration
The calendar and divisions thereof
Rules of computation of time in general

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Effect of lapse of time, see ADVERSE POSSESSION, LIMITATION OF ACTIONS, EQUITY, PAYMENT, and other specific topics

Particular acts and proceedings, time prescribed for, see APPEAL AND ERROR and other specific topics

1. The calendar.
2. Statutory provisions.
3. Computation in general; tolling.
- 3.5. Mailbox rule in general.
4. Years.
5. Months.
6. Weeks.

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7. Days.
8. — In general.
- 8.5. — Mailbox rule.
9. — Excluding first or last day.
 - (1). In general.
 - (1.5). Civil proceedings in general.
 - (2). Limitation of actions.
 - (3). Pleading.
 - (4). Notices and process.
 - (5). Judgment and execution.
 - (6). New trial.
 - (7). Presentation, allowance, service, and filing of bill of exceptions.
 - (8). Appeal and error and other proceedings for review.
 - (9). Time for redemption.
 - (10). Interpretation and performance of contracts.
 - (11). Criminal proceedings.
10. — Sunday or other nonjudicial day.
 - (1). In general.
 - (2). In civil proceedings in general.
 - (3). Signing or returning bills sent to governor for approval.
 - (4). Limitation of actions.
 - (5). Notices and process.
 - (6). Judgment and execution.
 - (7). New trial.
 - (8). Signing, filing, and presenting bills of exception.
 - (9). Appeal and error and other proceedings for review.
 - (10). Interpretation and performance of contracts.
 - (11). Criminal proceedings.
11. — Fractions of day.
12. Hours.
13. — In general.
14. — Solar or standard time.
15. Indefinite words and phrases.

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SUBJECTS INCLUDED

Actionable civil wrongs and violations of private rights, in general

Intentional torts, in general
Torts based on contractual relations, in general
Prima facie tort
Tortious interference with contracts, business or other relations, expectancies, or legal remedies
Spoliation of evidence
Invasion of privacy
Other particular torts not covered by specific topics

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Liability for injury to person or property caused by negligence, see NEGLIGENCE and specific topics covering particular subjects of negligence
Damages for torts, see DAMAGES and specific topics relating to particular injuries
Emotional distress or mental suffering caused by intentional, reckless, or outrageous conduct, see DAMAGES
Interference with employment contracts or relationships, see LABOR AND EMPLOYMENT IX
Employer's vicarious liability for torts of employee, see LABOR AND EMPLOYMENT §3054
Particular torts covered by other topics, including ASSAULT AND BATTERY, FALSE IMPRISONMENT, FORCIBLE ENTRY AND DETAINER, FRAUD, LIBEL AND SLANDER, MALICIOUS PROSECUTION, NUISANCE, TRESPASS, CONVERSION AND CIVIL THEFT, and WASTE
Abuse of process, see PROCESS IV
Conspiracy to commit tort, see CONSPIRACY
Strict liability, see NEGLIGENCE VIII, and PRODUCTS LIABILITY
Trade secrets and proprietary information, torts relating to, see ANTITRUST AND TRADE REGULATION IV
Matters relating to form of, or choice between, tort and contract actions, see ACTION, and ELECTION OF REMEDIES
Matters peculiar to the status or capacity of persons or entities committing torts, see INFANTS, MENTAL HEALTH, PARTNERSHIP, CORPORATIONS AND

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BUSINESS ORGANIZATIONS, and other specific topics

- I. IN GENERAL, ¶101–150.
- II. PRIMA FACIE TORT, ¶151–199.
- III. TORTIOUS INTERFERENCE, ¶200–324.
 - (A) IN GENERAL, ¶200–209.
 - (B) BUSINESS OR CONTRACTUAL RELATIONS, ¶210–288.
 - 1. IN GENERAL, ¶210–239.
 - 2. PARTICULAR CASES, ¶240–249.
 - 3. ACTIONS IN GENERAL, ¶250–255.
 - 4. EVIDENCE, ¶256–269.
 - 5. QUESTIONS OF LAW OR FACT, ¶270–279.
 - 6. INSTRUCTIONS, ¶280–286.
 - 7. VERDICT AND FINDINGS, ¶287–288.
 - (C) WILLS, INHERITANCES, TRUSTS AND GIFTS, ¶289–299.
 - (D) OBSTRUCTION OF OR INTERFERENCE WITH LEGAL REMEDIES; SPOILIATION, ¶300–324.
- IV. PRIVACY AND PUBLICITY, ¶325–419.
 - (A) IN GENERAL, ¶325–329.
 - (B) PRIVACY, ¶330–382.
 - 1. PRIVACY IN GENERAL, ¶330–339.
 - 2. INTRUSION, ¶340–349.
 - 3. PUBLICATIONS OR COMMUNICATIONS IN GENERAL, ¶350–362.
 - 4. EVIDENCE, ¶363–374.
 - 5. QUESTIONS OF LAW OR FACT, ¶375–378.
 - 6. INSTRUCTIONS, ¶379–382.
 - (C) USE OF NAME, VOICE OR LIKENESS; RIGHT TO PUBLICITY, ¶383–409.
 - (D) ACTIONS IN GENERAL, ¶410–419.
- V. OTHER MISCELLANEOUS TORTS, ¶420–456.

I. IN GENERAL.

- 101. In general.
- 102. Constitutional, statutory, and local regulation.
- 103. What law governs.
- 104. Preemption.
- 105. Purpose or function of tort law.
- 106. Nature and elements of torts in general.

I. IN GENERAL.(Cont'd)

- 107. Private or legal wrong; wrongful act in general.
- 108. Private or legal right or interest, and violation thereof.
- 109. Duty and breach thereof in general.
- 110. Contracts in relation to torts.
Tort of bad faith, see ¶431; distinction between forms of action, see ACTION ¶27; contractual duty, see also NEGLIGENCE ¶219.
- 111. — In general.
- 112. — Breach of contract in general.
- 113. — Duty and breach thereof.
 - (1). In general.
 - (2). Contractual duty.
- 114. — Duty, breach, or wrong independent of contract.
- 115. Intent or malice.
- 116. Injury or damage from act.
- 117. — In general.
- 118. — Economic loss doctrine.
- 119. Proximate cause.
- 120. Defenses and mitigating circumstances.
- 121. — In general.
- 122. — Litigation privilege; witness immunity.
- 123. — Contributory fault in general.
- 124. — Illegal or immoral conduct of person injured; in pari delicto.
- 125. — Comparative fault; apportionment.
- 126. — Assumption of risk; consent or waiver.
- 127. Persons entitled to sue.
- 128. Privity.
- 129. Persons liable.
- 130. — In general.
- 131. — Vicarious liability.
- 132. — Concerted action in general.
- 133. — Aiding and abetting.
- 134. — Joint tortfeasors in general.
- 135. — Joint and several liability.
- 136. Actions in general.
- 137. Nature and form of remedy.
See also, ACTION ¶27.
- 138. Grounds and conditions precedent.
- 139. Time to sue and limitations.
See also, LIMITATION OF ACTIONS.
- 140. Parties.
- 141. Pleading.
- 142. Evidence.

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I. IN GENERAL.(Cont'd)

- 143. — In general.
- 144. — Presumptions and inferences.
- 145. — Burden of proof.
- 146. — Admissibility.
- 147. — Weight and sufficiency.
- 148. Questions of law or fact.
- 149. Instructions.
- 150. Verdict and findings.

II. PRIMA FACIE TORT.

- 151. In general.
- 153. What law governs.
- 154. Preemption.
- 155. Nature and elements in general.
- 156. Availability of other legal remedy; existence of established tort.
- 157. Intent and malice; motive.
- 158. Justification, or absence or insufficiency thereof.
- 159. Injury or damage from act; causation.
- 160. Balancing of factors or interests.
- 161. Particular cases.
- 162. Actions in general.
- 163. Nature and form of remedy.
- 164. Grounds and conditions precedent.
- 165. Time to sue and limitations.
See also, LIMITATION OF ACTIONS.
- 166. Parties.
- 167. Pleading.
- 168. — In general.
- 169. — Special damages.
- 170. Evidence.
- 171. — In general.
- 172. — Presumptions and inferences.
- 173. — Burden of proof.
- 174. — Admissibility.
- 175. — Weight and sufficiency.
- 176. Questions of law or fact.
- 177. Instructions.
- 178. Verdict and findings.

III. TORTIOUS INTERFERENCE.

(A) IN GENERAL.

- 200. In general.
- 201. Constitutional, statutory, and local regulation.
- 202. What law governs.
- 203. Preemption.

III. TORTIOUS INTERFERENCE.(Cont'd)

- 204. Interference with fiduciary relationships or duties, in general.
- 205. Interference with property or property rights, in general.

(B) BUSINESS OR CONTRACTUAL RELATIONS.

Employment contracts or relationships, see LABOR AND EMPLOYMENT IX.

1. IN GENERAL.

- 210. In general.
- 211. Business relations or economic advantage, in general.
- 212. Contracts.
- 213. Prospective advantage, contract or relations; expectancy.
- 214. Existence of valid or identifiable contract, relationship or expectancy.
- 215. Knowledge and intent; malice.
- 216. Negligence.
- 217. Absence of justification or privilege.
- 218. Improper means; wrongful, tortious or illegal conduct.
- 219. Injury and causation.
- 220. Defense, justification or privilege in general.
- 221. Competition.
- 222. Tortfeasor as stranger to contract or relationship, in general.
- 223. Employees and agents; corporate entities.
Interference with employment contracts, see LABOR AND EMPLOYMENT IX.
- 224. Contributory fault.
- 225. Waiver or consent.
- 226. Persons entitled to sue.
- 227. Persons liable.
- 228. — In general.
- 229. — Vicarious liability.
- 230. — Concerted action.
- 231. — Aiding and abetting.
- 232. — Joint tortfeasors in general.
- 233. — Joint and several liability.

2. PARTICULAR CASES.

- 240. In general.
- 241. Business relations or economic advantage, in general.
- 242. Contracts in general.
- 243. Landlord and tenant.

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III. TORTIOUS INTERFERENCE.(Cont'd)

- 244. Insurance in general.
- 245. Physicians and health care; health insurance.
- 246. Attorneys.

3. ACTIONS IN GENERAL.

- 250. In general.
- 251. Nature and form of remedy.
- 252. Grounds and conditions precedent.
- 253. Time to sue and limitations.
See also, LIMITATION OF ACTIONS.
- 254. Parties.
- 255. Pleading.

4. EVIDENCE.

- 256. In general.
- 257. Presumptions and inferences.
- 258. Burden of proof.
- 259. Admissibility.
- 260. Weight and sufficiency.
- 261. — In general.
- 262. — Business relations or economic advantage, in general.
- 263. — Contracts in general.
- 264. — Landlord and tenant.
- 265. — Insurance in general.
- 266. — Physicians and health care; health insurance.
- 267. — Attorneys.

5. QUESTIONS OF LAW OR FACT.

- 270. In general.
- 271. Business relations or economic advantage, in general.
- 272. Contracts in general.
- 273. Landlord and tenant.
- 274. Insurance in general.
- 275. Physicians and health care; health insurance.
- 276. Attorneys.

6. INSTRUCTIONS.

- 280. In general.
- 281. Business relations or economic advantage, in general.
- 282. Contracts in general.
- 283. Landlord and tenant.
- 284. Insurance in general.

III. TORTIOUS INTERFERENCE.(Cont'd)

- 285. Physicians and health care; health insurance.
- 286. Attorneys.

7. VERDICT AND FINDINGS.

- 287. In general.
- 288. Inconsistent verdict.

(C) WILLS, INHERITANCES, TRUSTS AND GIFTS.

- 289. In general.
- 290. Actions in general.
- 291. Availability, adequacy, exclusivity, and exhaustion of other remedies.
- 292. Time to sue and limitations.
See also, LIMITATION OF ACTIONS.
- 293. Parties.
- 294. Pleading.
- 295. Evidence.
- 296. Questions of law or fact.
- 297. Instructions.
- 298. Verdict and findings.

(D) OBSTRUCTION OF OR INTERFERENCE WITH LEGAL REMEDIES; SPOILIATION.

- 300. Obstruction of or interference with legal remedies, in general.
- 301. — In general.
- 302. — Particular cases.
- 303. Spoliation, destruction, or loss of evidence.
- 304. — In general.
- 305. — Negligence.
- 306. — Particular cases.
- 307. Perjury or false testimony.
- 308. Actions in general.
- 309. Nature and form of remedy.
- 310. Grounds and conditions precedent.
- 311. Time to sue and limitations.
See also, LIMITATION OF ACTIONS.
- 312. Parties.
- 313. Pleading.
- 314. Evidence.
- 315. — In general.
- 316. — Presumptions and inferences.
- 317. — Burden of proof.
- 318. — Admissibility.
- 319. — Weight and sufficiency.
- 320. Questions of law or fact.

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III. TORTIOUS INTERFERENCE.(Cont'd)

- 321. Instructions.
- 322. Verdict and findings.

IV. PRIVACY AND PUBLICITY.

Constitutional right to privacy in general, see CONSTITUTIONAL LAW XI.

(A) IN GENERAL.

- 325. In general.
- 326. Constitutional, statutory, and local regulation.
- 327. What law governs.
- 328. Preemption.
- 329. Types of invasions or wrongs recognized.

(B) PRIVACY.

1. PRIVACY IN GENERAL.

- 330. In general.
- 331. Nature and extent of right in general.
- 332. Particular cases in general.
- 333. Defenses in general.
- 334. Public interest, record, figures.
- 335. Persons entitled to sue.
- 336. Persons liable.

2. INTRUSION.

- 340. In general.
- 341. Particular cases in general.
- 342. Defenses in general.
- 343. Public interest, record, figures.
- 344. Waiver or consent.
- 345. Persons entitled to sue.
- 346. Persons liable.

3. PUBLICATIONS OR COMMUNICATIONS IN GENERAL.

Defamation, and injurious falsehood, see LIBEL AND SLANDER.

- 350. In general.
- 351. Miscellaneous particular cases.
- 352. False light.
- 353. — In general.
- 354. — Particular cases in general.
- 355. Defenses in general.
- 356. Matters of public interest or public record; newsworthiness.
- 357. — In general.
- 358. — Public figures.
- 359. Litigation privilege; witness immunity.

IV. PRIVACY AND PUBLICITY.(Cont'd)

- 360. Waiver or consent.
- 361. Persons entitled to sue.
- 362. Persons liable.

4. EVIDENCE.

- 363. Evidence in general.
- 364. Presumptions and inferences.
- 365. Burden of proof.
- 366. Admissibility.
- 367. Weight and sufficiency.
- 368. — In general.
- 369. — Intrusion.
- 370. — Publications or communications in general.
- 371. — False light.

5. QUESTIONS OF LAW OR FACT.

- 375. In general.
- 376. Intrusion.
- 377. Publications or communications in general.
- 378. False light.

6. INSTRUCTIONS.

- 379. In general.
- 380. Intrusion.
- 381. Publications or communications in general.
- 382. False light.

(C) USE OF NAME, VOICE OR LIKENESS; RIGHT TO PUBLICITY.

- 383. In general.
- 384. Nature and extent of right.
- 385. Elements of the tort in general.
- 386. Conduct or misappropriation actionable in general.
- 387. — In general.
- 388. — Name.
- 389. — Voice.
- 390. — Picture, photograph, or likeness.
 - (1). In general.
 - (2). Particular cases.
- 391. Defenses in general.
- 392. Matters of public interest or public record; newsworthiness.
- 393. — In general.
- 394. — Public figures.
- 395. Waiver or consent.

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IV. PRIVACY AND PUBLICITY.(Cont'd)

- 396. Persons entitled to sue.
- 397. Persons liable.
- 398. Evidence.
- 399. — In general.
- 400. — Presumptions and inferences.
- 401. — Burden of proof.
- 402. — Admissibility.
- 403. — Weight and sufficiency.
- 404. Questions of law or fact.
- 405. Instructions.

(D) ACTIONS IN GENERAL.

- 410. In general.
- 411. Nature and form of remedy.
- 412. Grounds and conditions precedent.
- 413. Time to sue and limitations.
See also, LIMITATION OF ACTIONS.
- 414. Parties.
- 415. Pleading.
- 416. Verdict and findings.

V. OTHER MISCELLANEOUS TORTS.

- 420. In general.
- 421. Constitutional, statutory, and local regulation.
- 422. What law governs.
- 423. Preemption.
- 424. Miscellaneous torts in general.
- 425. Injuries to person in general.
- 426. Transmission of disease.
- 427. Invasion of personal safety, security, or comfort in general.
- 428. Harassment in general; sexual harassment or solicitation.
See also, CIVIL RIGHTS, LABOR AND EMPLOYMENT.
- 429. Injury to property or rights of property, in general.
- 430. Forgery.
- 431. Bad faith.
Bad faith in the insurance context, see INSURANCE XXVII(C), INSURANCE §3419.
- 432. — In general.
- 433. — Contractual relations; implied covenants.
- 434. — Denial of existence of contract.
- 435. Abuse of rights.
- 436. Duress or coercion in general; extortion and threats.

V. OTHER MISCELLANEOUS TORTS.(Cont'd)

- 437. Resort to or conduct of legal remedies.
See also MALICIOUS PROSECUTION; abuse of process, see PROCESS IV; remedy of striking pleadings, see PLEADING §358.
- 438. Debt collection.
See also CREDITORS' REMEDIES XIII, FINANCE, BANKING, AND CREDIT III(B)4, XVI(I).
- 439. Injury or damage from act.
- 440. Persons entitled to sue.
- 441. Persons liable.
- 442. Actions in general.
- 443. Nature and form of remedy.
- 444. Grounds and conditions precedent.
- 445. Time to sue and limitations.
See also, LIMITATION OF ACTIONS.
- 446. Parties.
- 447. Pleading.
- 448. Evidence.
- 449. — In general.
- 450. — Presumptions and inferences.
- 451. — Burden of proof.
- 452. — Admissibility.
- 453. — Weight and sufficiency.
- 454. Questions of law or fact.
- 455. Instructions.
- 456. Verdict and findings.

380. TOWAGE

SUBJECTS INCLUDED

Employment of tugs or vessels of any kind to expedite the progress of other vessels
Mutual rights, duties, and liabilities of tugs and tows, and their respective owners, charterers, and masters

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Collisions of tugs or tows with other vessels, see COLLISION
Salvage by tugs, and towage as a salvage service, see SALVAGE
Vessels in general, matters applicable to, see SHIPPING

- 1. What constitutes towage.
- 2. Statutory regulations.
- 3. Contracts.

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4. Relation and duties of tug to tow in general.
5. Compensation.
6. — In general.
7. — Amount.
8. — Actions.
9. — Lien.
10. Loss of or injury to tow.
- 10.1. — In general.
11. — Negligence or fault of tug.
 - (1). In general.
 - (2). Vessels or persons liable.
 - (3). Mistakes of judgment.
 - (4). Making up tow.
 - (5). Stranding or foundering.
 - (6). Collision.
 - (7). Colliding with bridge or pier.
 - (8). Striking rocks or other obstructions.
 - (9). Stress of weather.
 - (10). Mooring, anchoring, or abandonment of tow.
 - (11). Breaking of line.
12. — Contributory negligence or fault of tow.
 - (1). In general.
 - (2). Negligence or fault of both vessels.
13. — Duties after disaster.
14. — Provisions of special contracts.
15. — Actions for damages.
 - (1). In general.
 - (2). Evidence.
 - (3). Damages.
16. — Lien for damages.
17. Mutual rights and liabilities of tows.
18. Loss of or injury to tug.
19. Injuries to third persons.

381. TOWNS

SUBJECTS INCLUDED

The secondary territorial divisions of states or territories for political purposes, whether grouped to form counties or formed by

subdivision of counties, and whether designated as towns or townships
Their status as bodies politic and corporate
Their creation, organization, boundaries, alteration, and discontinuance
Town meetings in general
Local boards and officers, and their rights, powers, proceedings, and liabilities
Town property, contracts, indebtedness, bonds and other securities
Town taxes, claims against towns, and actions by or against towns

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Charitable and reformatory institutions, see ASYLUMS AND ASSISTED LIVING FACILITIES, HEALTH, INFANTS, PRISONS
Election of town officers, see ELECTION LAW
Municipal corporations in general and incorporated towns, villages, etc., see MUNICIPAL CORPORATIONS
Public lands, townships as subdivisions of, see PUBLIC LANDS
Public officers in general and civil service requirements, see PUBLIC EMPLOYMENT
Roads and bridges, see HIGHWAYS, BRIDGES
Special purposes, subdivisions created for, see EDUCATION, HIGHWAYS, ELECTION LAW, and other specific topics
Zoning, see ZONING AND PLANNING

- I. CREATION, ALTERATION, EXISTENCE, AND POLITICAL FUNCTIONS, ¶1-14.
- II. GOVERNMENT AND OFFICERS, ¶15-34.
- III. PROPERTY, CONTRACTS, AND LIABILITIES, ¶35-45.
- IV. FISCAL MANAGEMENT, PUBLIC DEBT, SECURITIES, AND TAXATION, ¶46-61.
- V. CLAIMS AGAINST TOWNS, ¶62-63.
- VI. ACTIONS, ¶64-84.

I. CREATION, ALTERATION, EXISTENCE, AND POLITICAL FUNCTIONS.

1. Nature and status.

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I. CREATION, ALTERATION, EXISTENCE, AND POLITICAL FUNCTIONS.(Cont'd)

2. Constitutional and statutory provisions.
3. Creation and organization.
4. Territorial extent and boundaries.
See also ZONING AND PLANNING.
5. Alteration, and creation of new towns or townships.
 - 5.1. — In general.
6. — Change of boundaries.
7. — Consolidation.
8. — Division.
9. — Proceedings.
10. — Operation and effect.
11. — Adjustment of pre-existing rights and liabilities.
12. Precincts and divisions for special purposes.
See also ZONING AND PLANNING.
13. Classification.
14. Dissolution.

II. GOVERNMENT AND OFFICERS.

15. Governmental powers in general.
See also ZONING AND PLANNING.
- 15.5. Power to make public improvements.
16. Legislative control of acts, rights, and liabilities.
17. Town meetings.
18. — In general.
19. — Calling, warrant, or notice.
20. — Notice of business to be transacted.
21. — Place and time.
22. — Organization and conduct.
23. — Right to vote, voting, and result.
24. — Record of proceedings.
25. — Review of proceedings.
26. Town board in general.
27. Creation and abolition of offices and employments.
28. Appointment or election, qualification, tenure, and removal of officers or employees.
29. Compensation of officers.
30. Authority and powers of officers.
31. Duties and liabilities of officers.
32. Accounting by officers for public funds or other property.
33. Liabilities on official bonds.
34. Criminal responsibility of officers.

III. PROPERTY, CONTRACTS, AND LIABILITIES.

35. Public buildings and other property.
 - (.5). In general.
 - (1). Acquisition, use and title to property.
 - (2). Lease or other disposition.
36. Capacity to contract in general.
37. Powers of town board or officers to contract.
38. Making, requisites, and validity of contracts.
39. Unauthorized or illegal contracts.
 - (.5). In general.
 - (1). Effect of illegality in general.
 - (2). Ratification.
40. Implied contracts.
41. Construction and operation of contracts.
42. Performance or breach and rescission of contracts.
43. Town expenses and charges.
44. Liabilities specially imposed by statute.
45. Torts.

IV. FISCAL MANAGEMENT, PUBLIC DEBT, SECURITIES, AND TAXATION.

46. Power to incur indebtedness and expenditures.
 - (1). In general.
 - (2). Aid to corporations, and subscription to or purchase of corporate stock.
 - (3). Borrowing money.
 - (4). Unauthorized debts or expenditures.
47. Constitutional and statutory provisions.
48. Administration of finances.
49. Appropriations and payment of indebtedness in general.
50. Warrants, orders, and certificates of indebtedness.
51. Bills and notes.
52. Bonds and other securities.
 - (1). In general.
 - (2). Purposes of issue of bonds in general.
 - (3). Aid to corporations.
 - (4). Proceedings preliminary to issue of bonds in general.

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IV. FISCAL MANAGEMENT, PUBLIC DEBT, SECURITIES, AND TAXATION.(Cont'd)

- (5). Submission of question of issue of bonds to vote.
- (6). Form and contents, and execution of bonds.
- (7). Effect of invalidity of bonds.
- (8). Payment.
- 53. Taxation.
- 54. — In general.
- 55. — Purposes of taxation.
- 56. — Levy for general purposes of town.
- 57. — Levy for special purposes.
- 58. — Assessment.
- 59. — Payment, collection, and enforcement.
- 60. Disposition of proceeds of taxes and other revenue.
- 61. Rights and remedies of taxpayers.

V. CLAIMS AGAINST TOWNS.

- 62. Presentation and allowance.
- 63. Payment.

VI. ACTIONS.

- 64. Capacity to sue or be sued in general.
- 66. Rights of action.
- 67. Conditions precedent.
- 68. — In general.
- 69. — Notice or demand.
- 70. — Presentation of claim.
- 71. Defenses.
- 72. Jurisdiction and venue.
- 73. Time to sue and limitations.
See also LIMITATION OF ACTIONS.
- 74. Authority to sue or defend in behalf of town.
- 75. Parties.
- 76. Process.
- 77. Appearance and representation by attorney.
- 78. Pleading.
- 79. Evidence.
- 80. Trial.
- 81. Judgment.
- 82. Execution and enforcement of judgment.
- 84. Costs.

382T. TRADEMARKS

SUBJECTS INCLUDED

Trademarks, trade names, and trade dress
Their nature and incidents of rights to exclusive use thereof
Registration and regulation of such marks and names
Infringement and other violations of such rights and remedies therefor
Unfair competition involving such marks and names and remedies therefor

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Business names, non-trademark regulation of, see CORPORATIONS AND BUSINESS ORGANIZATIONS, PARTNERSHIP, and other specific topics
Copyrights, see COPYRIGHTS AND INTELLECTUAL PROPERTY
Internet domain names, non-trademark regulation of, see TELECOMMUNICATIONS
Names more generally, see NAMES
Patents, see PATENTS
Trade regulation more generally, see ANTI-TRUST AND TRADE REGULATION
Unfair competition more generally, see ANTI-TRUST AND TRADE REGULATION

- I. IN GENERAL, ¶1000-1019.
- II. MARKS PROTECTED, ¶1020-1079.
- III. SIMILARITY BETWEEN MARKS; LIKELIHOOD OF CONFUSION, ¶1080-1129.
- IV. CREATION AND PRIORITY OF RIGHTS, ¶1130-1149.
- V. DURATION AND TERMINATION OF RIGHTS, ¶1150-1179.
- VI. NATURE, EXTENT, AND DISPOSITION OF RIGHTS, ¶1180-1229.
- VII. REGISTRATION, ¶1230-1409.
 - (A) IN GENERAL, ¶1230-1279.
 - (B) PROCEEDINGS CONCERNING FEDERAL REGISTRATION, ¶1280-1349.
 - (C) EFFECT OF FEDERAL REGISTRATION, ¶1350-1379.
 - (D) MISUSE OF FEDERAL REGISTRATION, ¶1380-1409.
- VIII. VIOLATIONS OF RIGHTS, ¶1410-1549.
 - (A) IN GENERAL, ¶1410-1449.

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VIII. VIOLATIONS OF RIGHTS—Cont'd

(B) DILUTION, ¶1450–1489.

(C) MISUSE OF INTERNET DOMAIN NAMES; CYBERPIRACY AND CYBERSQUATTING, ¶1490–1519.

(D) DEFENSES, EXCUSES, AND JUSTIFICATIONS, ¶1520–1549.

IX. ACTIONS AND PROCEEDINGS, ¶1550–1779.

(A) IN GENERAL, ¶1550–1579.

(B) PLEADING, ¶1580–1599.

(C) EVIDENCE, ¶1600–1649.

(D) DAMAGES AND PROFITS, ¶1650–1679.

(E) TRIAL AND JUDGMENT, ¶1680–1699.

(F) INJUNCTIONS, ¶1700–1749.

(G) COSTS, ¶1750–1779.

X. OFFENSES AND PENALTIES, ¶1780–1799.

XI. TRADEMARKS AND TRADE NAMES ADJUDICATED, ¶1800.

I. IN GENERAL.

1000. In general.

1001. Protection and regulation in general.

1002. Power to protect and regulate in general.

1003. Constitutional and statutory provisions.
See also ¶1231, 1411, 1451, 1491, 1551, 1781.

1004. — In general.

1005. — Purpose and construction in general.

1006. — Validity.

1007. — Retroactive operation.

1008. Treaties and international conventions.
See also ¶1236.

1009. What law governs.
See also ¶1237, 1416, 1456, 1496, 1552.

1010. Preemption.
See also ¶1238, 1417, 1457, 1497, 1553.

1011. Administrative regulation.
Registration, see VII.

1012. — In general.

1013. — Proceedings and orders.

1014. — Judicial review.

II. MARKS PROTECTED.

Marks protected against dilution and cybersquatting, see ¶1468, 1499.

1020. In general.

1021. Nature of trademarks in general; definitions.

1022. Subject matter underlying trademarks.

II. MARKS PROTECTED.(Cont'd)

1023. — In general.

1024. — Services and service marks in general.

1025. — Particular goods, services, or other subject matter.

Trade dress, see ¶1061.

1026. Trade names in general.

1027. Function and purpose of trademarks in general.

1028. Indication of origin or ownership; identification.

1029. Capacity to distinguish or signify; distinctiveness.

1030. — In general.

1031. — Inherent distinctiveness in general.

1032. — Acquired distinctiveness and secondary meaning in general.

See also ¶1037, 1048, 1063, 1065(2).

1033. Levels or categories of distinctiveness in general; strength of marks in general.

Strength or fame as factor in likelihood of confusion analysis, see ¶1092. *Famous marks as protected from dilution, see* ¶1468.

1034. Generic terms or marks.

Marks which become generic through use or over time, see ¶1166.

1035. Descriptive terms or marks.

1036. — In general.

1037. — Acquired distinctiveness; secondary meaning.

1038. Suggestive terms or marks.

1039. Arbitrary or fanciful terms or marks.

1040. Names as marks.

1041. — In general.

1042. — Persons, names of.

Rights of others to use their own name, see ¶1526.

1043. — Literary or creative works, names of.

1044. — Internet domain names.

Non-trademark regulation, see TELECOMMUNICATIONS.

1045. Geographical terms or names as marks.

1046. — In general.

1047. — Descriptiveness.

(1). In general.

(2). Misdscriptiveness.

1048. — Acquired distinctiveness; secondary meaning.

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II. MARKS PROTECTED.(Cont'd)

1049. — Deception.
Deceptive matter more generally, see ¶1073.
(1). In general.
(2). Deceptive misdescriptiveness.
1050. Format or components of term or mark.
1051. — In general.
1052. — Letters or initials; abbreviations.
1053. — Foreign or obscure words or letters.
1054. — Peculiarities in spelling or printing.
1055. — Phrases; slogans.
1056. — Numerals.
1057. — Nonliteral elements.
Trade dress, see ¶1061.
(1). In general.
(2). Color.
1058. — Multiple elements; combinations.
1059. — Size and position of elements.
1060. Multiple marks.
1061. Form, features, or design of product as marks; trade dress.
1062. — In general.
1063. — Distinctiveness; secondary meaning.
1064. — Functionality.
1065. — Particular cases or products.
(1). In general.
(2). Distinctiveness; secondary meaning.
(3). Functionality.
1066. Certification marks.
1067. Collective marks.
1068. Public entities and organizations, marks concerning.
1069. Social organizations, marks concerning.
1070. Labor organizations, marks or labels concerning.
1071. Other particular marks.
1072. Immoral or scandalous matter.
1073. False or deceptive matter.
Deceptive geographical terms or marks, see ¶1049.

III. SIMILARITY BETWEEN MARKS; LIKELIHOOD OF CONFUSION.

Necessity of similarity or confusion, see ¶1243, 1418.

1080. In general.
1081. Factors considered in general.
1082. Miscellaneous particular cases; determinations based on multiple factors.
1083. Nature of confusion.

III. SIMILARITY BETWEEN MARKS; LIKELIHOOD OF CONFUSION.(Cont'd)

1084. — In general.
1085. — Extent or degree of confusion.
1086. — Actual confusion.
1087. — Time of confusion.
1088. — “Initial interest” confusion.
1089. — “Reverse” confusion.
1090. Nature of marks.
1091. — In general.
1092. — Strength or fame of marks; degree of distinctiveness.
Strength or fame more generally, see ¶1033.
1093. Relationship between marks.
1094. — In general.
1095. — Similarity or dissimilarity in general.
1096. — Particular marks, relationship between.
1097. — Examination and comparison; construction as entirety.
1098. — Appearance, sound, and meaning.
1099. Nature of goods or services underlying marks.
1100. Relationship between goods or services underlying marks.
1101. — In general.
1102. — Similarity or dissimilarity in general.
1103. — Particular goods and services, relationship between.
1104. — Markets and territories; competition.
Priority, see ¶1137.
1105. — Relative quality.
1106. Relationship between parties or actors using marks.
1107. Nature and circumstances of use of marks.
Fair use, parody, and other justified or permissible uses, see ¶1521.
1108. — In general.
1109. — Particular uses.
1110. — Trade channels; sales, advertising, and marketing.
1111. Intent; knowledge of confusion or similarity.
Intent of infringer more generally, see ¶1437.
1112. Persons confused; circumstances of sale.

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III. SIMILARITY BETWEEN MARKS; LIKE- LIHOOD OF CONFUSION.(Cont'd)

- 1113. Accompaniments mitigating confusion; disclaimers.
- 1114. Doubt as to confusion.
- 1115. Other particular factors.
- 1116. Internet cases.
- 1117. Trade dress.
- 1118. — In general.
- 1119. — Particular cases.

IV. CREATION AND PRIORITY OF RIGHTS.

- 1130. In general.
- 1131. Conception, adoption, or appropriation of mark.
- 1132. Use of mark.
- 1133. — In general.
- 1135. — Adoption and use.
- 1136. — Nature and extent of use.
 - (1). In general.
 - (2). Particular cases.
- 1137. — Scope and priority of use; multiple users, markets, or territories.
Markets, territories, and competition as factors in likelihood of confusion analysis, see ¶1104.
 - (1). In general.
 - (2). Particular cases.
- 1138. — Foreign use; foreign users.
- 1139. — Propriety or impropriety of use; motive and intent.
False, deceptive, or disparaging trademarks, see ¶1073. Misuse of already-established mark, see ¶1184. Intent of infringer, see ¶1111, 1437.
- 1140. — Continuity of use.
- 1141. — Future use; plan or intent to use.
- 1142. Affixation.
- 1143. Other particular grounds or requirements.

V. DURATION AND TERMINATION OF RIGHTS.

- 1150. In general.
- 1151. Duration in general.
- 1152. Loss or termination of rights in general.
- 1153. Abandonment in general.
- 1154. Nature and manner of use.
- 1155. Extent of use; discontinuance and non-use.
- 1156. — In general.
- 1157. — Particular cases.

V. DURATION AND TERMINATION OF RIGHTS.(Cont'd)

- 1158. Discontinuance or transfer of business or assets.
- 1159. Prohibition of use or business.
- 1160. Change in mark.
- 1161. Change in subject matter underlying mark.
- 1162. Use by others.
- 1163. — In general.
- 1164. — Permission; voluntary arrangements.
Effect of "naked" licenses, see ¶1208.
- 1165. — Objections; laches, acquiescence, and delay.
- 1166. Loss of distinctiveness; acquired generic meaning.
- 1167. Evidence.
- 1168. — In general.
- 1169. — Presumptions and burden of proof.
- 1170. — Admissibility.
- 1171. — Weight and sufficiency.
- 1172. Effect of loss, termination, or abandonment of rights.

VI. NATURE, EXTENT, AND DISPOSITION OF RIGHTS.

- 1180. In general.
- 1181. Mark as property; property rights in general.
- 1182. Right to use in general; exclusivity.
- 1183. — In general.
- 1184. — Manner of use; misuse.
- 1185. Right to control quality in general.
- 1186. Rights in gross; relation of mark to good will or business in general.
Assignments in gross, see ¶1201.
- 1187. Persons entitled to assert rights.
Persons entitled to sue, see ¶1563.
- 1188. — In general.
- 1189. — Change in business, effect of.
- 1190. — Succession or inheritance.
- 1191. Contracts in general.
- 1192. — In general.
- 1193. — Nature of trademark agreements; definitions.
Assignments in gross, see ¶1201. Implied licenses, see ¶1207. "Naked" licenses, see ¶1208.
- 1194. — Formation; requisites and validity.

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VI. NATURE, EXTENT, AND DISPOSITION OF RIGHTS.(Cont'd)

- 1195. — Construction and operation.
- 1196. — Duration and termination.
- 1197. Transfer or sale; assignments.
- 1198. — In general.
Nature and definition of trademark agreements, see ¶1193.
- 1199. — Formation; requisites and validity.
- 1200. — Construction and operation.
 - (1). In general.
 - (2). Duties, rights, and violations.
 - (3). Competition by assignor.
- 1201. — Relation to business, assets, or good will; assignments in gross.
 - (1). In general.
 - (2). Transfer of business, assets, or good will as including mark.
- 1202. Licenses.
- 1203. — In general.
Nature and definition of trademark agreements, see ¶1193.
- 1204. — Formation; requisites and validity.
- 1205. — Construction and operation.
 - (1). In general.
 - (2). Duties, rights, and violations.
 - (3). Effect as estoppel.
- 1206. — Duration and termination; revocation.
- 1207. — Implied licenses.
- 1208. — Control over use or quality; “naked” licenses.
- 1209. Franchise agreements.
- 1210. — In general.
Nature and definition of trademark agreements, see ¶1193.
- 1211. — Formation; requisites and validity.
- 1212. — Construction and operation.
- 1213. — Duration and termination; revocation.
- 1214. Other particular dispositions of rights.

VII. REGISTRATION.

Non-trademark registration of Internet domain names, see TELECOMMUNICATIONS.

(A) IN GENERAL.

- 1230. In general.
- 1231. Constitutional and statutory provisions.

VII. REGISTRATION.(Cont'd)

- 1232. — In general.
- 1233. — Purpose and construction in general.
- 1234. — Validity.
- 1235. — Retroactive operation.
- 1236. Treaties and international conventions.
- 1237. What law governs.
- 1238. Preemption.
- 1239. Federal registration in general.
- 1240. Nature of registration.
- 1241. Necessity of registration.
- 1242. Right to registration in general.
- 1243. Eligibility for registration; grounds for allowing or denying.
Marks protected, see II. What constitutes similarity or confusion, see III. Grounds for opposition or cancellation, see ¶1292, 1299.
- 1244. — In general.
- 1245. — Principal Register.
- 1246. — Supplemental Register.
- 1247. — Concurrent registration.
Proceedings, see ¶1288.
- 1248. Persons entitled to registration.
- 1249. Issuance of registration.
- 1250. Notice of registration.
Misuse of notice, see VII(D).
- 1251. Maintenance of registration.
- 1252. Duration of registration.
- 1253. — In general.
- 1254. — Reregistration and renewal of registration.
Proceedings, see ¶1304.
- 1255. Alteration of registration.
- 1256. State registration.
- 1257. — In general.
- 1258. — Proceedings.
- 1259. — Effect.
- 1260. — Misuse.
- 1261. Foreign registration.
- 1262. — In general.
- 1263. — Proceedings.
- 1264. — Effect.
- 1265. — Misuse.
- 1266. Foreign marks or owners, registration in United States.

(B) PROCEEDINGS CONCERNING FEDERAL REGISTRATION.

- 1280. In general.
- 1281. Nature of proceedings; conversion.

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VII. REGISTRATION.(Cont'd)

- 1282. Application and related materials.
- 1283. — In general.
- 1284. — Intent-to-use application.
- 1285. — Scope and effect.
- 1286. Disclaimer.
- 1287. Proceedings on application; examination.
- 1288. Concurrent use proceedings.
Grounds for concurrent registration, see ¶1247.
- 1289. Interference.
- 1290. Opposition.
- 1291. — In general.
- 1292. — Grounds; issues.
- 1293. — Defenses; time for proceedings.
- 1294. — Persons entitled to oppose; standing; parties.
- 1295. — Pleadings and related materials.
- 1296. — Conduct of proceedings; hearing and determination.
- 1297. Cancellation.
- 1298. — In general.
- 1299. — Grounds; issues.
- 1300. — Defenses; time for proceedings.
- 1301. — Persons entitled to seek cancellation; standing; parties.
- 1302. — Pleadings and related materials.
- 1303. — Conduct of proceedings; hearing and determination.
- 1304. Reregistration and renewal of registration, proceedings concerning.
Grounds for reregistration and renewal, see ¶1254.
- 1305. Discovery.
- 1306. Evidence.
Evidence of abandonment or other loss of rights, see ¶1167.
- 1307. — In general.
- 1308. — Presumptions and burden of proof.
- 1309. — Admissibility.
- 1310. — Weight and sufficiency.
- 1311. — Degree of proof.
- 1312. Questions of law or fact.
- 1313. Administrative review.
- 1314. Conclusiveness and effect of administrative decisions.
- 1315. Judicial review or intervention.
- 1316. — In general.
- 1317. — Nature and form of remedy; jurisdiction and authority of courts.

VII. REGISTRATION.(Cont'd)

- (1). In general.
- (2). Multiple remedies or proceedings.
- 1318. — Decisions or acts reviewable.
- (1). In general.
- (2). Finality; ripeness.
- (3). Mootness.
- 1319. — Preservation of questions in administrative proceeding; record.
- 1320. — Persons entitled to seek review or intervention; standing; parties.
- 1321. — Time for proceedings.
- 1322. — Scope of review.
- 1323. — Harmless error.
- 1324. — Proceedings on review.
- 1325. — Hearing.
- 1326. — Determination and disposition.
- 1327. — Further review.
- 1328. Costs and fees.

(C) EFFECT OF FEDERAL REGISTRATION.

- 1350. In general.
- 1351. Conclusiveness in general.
- 1352. Incontestability in general.
- 1353. — In general.
- 1354. — Grounds.
- 1355. — Proceedings to establish; affidavits.
- 1356. Substantive rights or procedural advantages in general.
- 1357. Effect as evidence in general.
- 1358. Particular effects; rights acquired.
- 1359. — In general.
- 1360. — Validity, ownership, and use.
- 1361. — Notice.
- 1362. — Infringement and other violations; likelihood of confusion.
- 1363. — Nature or type of mark; distinctiveness and strength.
- 1364. Scope of rights acquired; limitations.
- 1365. — In general.
- 1366. — Effect on rights of others in general.
- 1367. — Priority in general; multiple uses.
- 1368. — Words or symbols constituting mark.
- 1369. — Goods or services underlying mark; class.
- 1370. — Territorial extent.

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VII. REGISTRATION.(Cont'd)

1371. Effect of denial, cancellation, or other loss of registration.
Effect of failure to register, see ¶1241.

(D) MISUSE OF FEDERAL REGISTRATION.

1380. In general.
1381. False or fraudulent registration in general.
1382. — In general.
1383. — Proceedings.
1384. — Evidence.
1385. Cancellation for misuse.
1386. — In general.
1387. — False or fraudulent registration.
1388. — Proceedings.
1389. — Evidence.
1390. Effect in general; incontestability.
1391. Other remedies; damages, costs, and fees.

VIII. VIOLATIONS OF RIGHTS.

(A) IN GENERAL.

1410. In general.
1411. Constitutional and statutory provisions.
1412. — In general.
1413. — Purpose and construction in general.
1414. — Validity.
1415. — Retroactive operation.
1416. What law governs.
1417. Preemption.
1418. Practices or conduct prohibited in general; elements.
What constitutes similarity or confusion, see III.
1419. — In general.
1420. — Unfair competition.
1421. — Infringement.
1422. Nature of defendant's use; use in commerce.
1423. Particular cases, practices, or conduct.
What constitutes similarity or confusion, see III.
1424. — In general.
1425. — Unfair competition in general.
1426. — Infringement in general.
1427. — Advertising or marketing.
1428. — Passing off or palming off.
 (1). In general.
 (2). Reverse passing off or palming off.

VIII. VIOLATIONS OF RIGHTS.(Cont'd)

1429. — Use on genuine goods; resale under original marks or name.
 (1). In general.
 (2). Repaired, rebuilt, or altered goods.
1430. — Repackaging.
 (1). In general.
 (2). Reusing marked packages.
1431. — Substitution of goods.
1432. — Counterfeiting.
Criminal liability, see ¶1787.
1433. — Imports and exports.
1434. — Use of Olympic symbols.
1435. Internet use.
Cybersquatting and cyberpiracy, see VIII(C).
1436. Trade dress.
1437. Knowledge, intent, and motives; bad faith.
Knowledge of confusion or similarity, intent to deceive, see ¶1111.

(B) DILUTION.

1450. In general.
1451. Constitutional and statutory provisions.
1452. — In general.
1453. — Purpose and construction in general.
1454. — Validity.
1455. — Retroactive operation.
1456. What law governs.
1457. Preemption.
1458. Nature and elements in general.
1459. — In general.
1460. — Miscellaneous particular cases.
1461. Nature and extent of harm; similarity, competition, and confusion.
1462. Reduction of mark's capacity to identify; blurring.
1463. — In general.
1464. — Particular cases.
1465. Creation of unfavorable associations; tarnishment.
1466. — In general.
1467. — Particular cases.
1468. Marks protected; strength or fame.
1469. Nature of defendant's use; use in commerce.
1470. Internet use.
Cybersquatting and cyberpiracy, see VIII(C).
1471. Generic use.

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VIII. VIOLATIONS OF RIGHTS.(Cont'd)

- 1472. Trade dress.
- 1473. Knowledge, intent, and motives; bad faith.

(C) MISUSE OF INTERNET DOMAIN NAMES; CYBERPIRACY AND CYBERSQUATTING.

Non-trademark regulation of domain names, see TELECOMMUNICATIONS.

- 1490. In general.
- 1491. Constitutional and statutory provisions.
- 1492. — In general.
- 1493. — Purpose and construction in general.
- 1494. — Validity.
- 1495. — Retroactive operation.
- 1496. What law governs.
- 1497. Preemption.
- 1498. Nature and elements in general.
- 1499. Marks protected.
- 1500. Nature of offending domain name; similarity and confusion.
- 1501. Practices or conduct prohibited.
- 1502. Knowledge, intent, and motives; bad faith.
- 1503. Rights of domain name holders; protection against overreaching.

(D) DEFENSES, EXCUSES, AND JUSTIFICATIONS.

- 1520. In general.
- 1521. Justified or permissible uses.
- 1522. — In general.
- 1523. — Identification or description.
 - (1). In general.
 - (2). Of one's own product; fair use.
 - (3). Of another's product; nominative and comparative use.
- 1524. — Expressive use; commentary.
See also CONSTITUTIONAL LAW ¶1604.
 - (1). In general.
 - (2). Parody or satire.
- 1525. — Use by prior consent.
 - (1). In general; scope.
 - (2). Duration of consent; post-termination use.
- 1526. — Use of own name.
Names as protected marks, see ¶1040.
- 1527. — Other particular uses.
- 1528. Discontinuance of use or infringement.
- 1529. Use or infringement by third parties.

VIII. VIOLATIONS OF RIGHTS.(Cont'd)

- 1530. Conduct or misconduct of plaintiff in general.
- 1531. Misuse of mark by plaintiff.
- 1532. Invalidity of mark or registration; loss of rights.
- 1533. Delay in assertion of rights; laches.
- 1534. — In general.
- 1535. — Knowledge of facts.
- 1536. — Length of delay.
- 1537. — Prejudice from delay.
- 1538. — Effect of changes in defendant's use; progressive encroachment.
- 1539. Acquiescence.
- 1540. Estoppel.
- 1541. Waiver.

IX. ACTIONS AND PROCEEDINGS.

Judicial review of or intervention into federal registration, see ¶1315.

(A) IN GENERAL.

- 1550. In general.
- 1551. Constitutional and statutory provisions.
- 1552. What law governs.
- 1553. Preemption.
- 1554. Nature and form of remedy.
- 1555. Existence of other remedy.
- 1556. Conditions precedent.
- 1557. Jurisdiction.
- 1558. — In general.
- 1558.5. — Personal jurisdiction in general.
- 1559. — Foreign commerce.
- 1560. — Internet use; cybersquatting.
- 1561. Venue.
- 1562. Time to sue and limitations.
- 1563. Persons entitled to sue.
Persons entitled to assert rights more generally, see ¶1187.
- 1564. Persons liable.
- 1565. — In general.
- 1566. — Contributory liability.
- 1567. Parties.
- 1568. Process.
- 1569. Ex parte seizure.

(B) PLEADING.

- 1580. In general.
- 1581. Complaint or petition.
- 1582. — In general.

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IX. ACTIONS AND PROCEEDINGS.(Cont'd)

- 1583. — Infringement.
- 1584. — Unfair competition.
- 1585. — Dilution.
- 1586. — Misuse of internet domain names; cybersquatting.
- 1587. — Trade dress.
- 1588. Answer and counterclaim.
- 1589. Amended and supplemental pleadings.
- 1590. Issues, proof, and variance.

(C) EVIDENCE.

Evidence of abandonment or other loss of rights, see
§1167.

- 1600. In general.
- 1601. Presumptions and burden of proof.
- 1602. — In general.
- 1603. — Infringement in general.
- 1604. — Unfair competition in general.
- 1605. — Dilution.
- 1606. — Misuse of internet domain names; cybersquatting.
- 1607. — Creation and priority of rights.
- 1608. — Marks protected; secondary meaning.
- 1609. — Similarity; likelihood of confusion.
- 1610. — Knowledge, intent, and motive; bad faith.
- 1611. — Trade dress.
- 1612. — Defenses, excuses, and justifications.
- 1613. Admissibility.
- 1614. — In general.
- 1615. — Infringement in general.
- 1616. — Unfair competition in general.
- 1617. — Dilution.
- 1618. — Misuse of internet domain names; cybersquatting.
- 1619. — Consumer data and market research; tests and surveys.
- 1620. Weight and sufficiency.
- 1621. — In general.
- 1622. — Infringement in general.
- 1623. — Unfair competition in general.
- 1624. — Dilution.
- 1625. — Misuse of internet domain names; cybersquatting.
- 1626. — Creation and priority of rights.
- 1627. — Marks protected.

IX. ACTIONS AND PROCEEDINGS.(Cont'd)

- 1628. — Secondary meaning.
 - (1). In general.
 - (2). Particular cases.
 - (3). Consumer data and market research; tests and surveys.
- 1629. — Similarity; likelihood of confusion.
 - (1). In general.
 - (2). Actual confusion.
 - (3). Particular cases.
 - (4). Consumer data and market research; tests and surveys.
- 1630. — Knowledge, intent, and motive; bad faith.
- 1631. — Trade dress.
- 1632. — Defenses, excuses, and justifications.

(D) DAMAGES AND PROFITS.

- 1650. In general.
- 1651. Laches, acquiescence, or estoppel.
- 1652. Damages.
- 1653. — In general.
- 1654. — Confusion or deception.
- 1655. — Intent; fraud.
- 1656. — Elements of damages.
 - (1). In general.
 - (2). Corrective advertising.
 - (3). Loss of profits or royalties.
 - (4). Good will.
- 1657. — Measure and amount.
- 1658. — Enhanced damages; double or treble damages.
- 1659. — Punitive or exemplary damages.
- 1660. — Evidence.
- 1661. Profits; accounting.
- 1662. — In general.
- 1663. — Confusion or deception.
- 1664. — Intent; fraud.
- 1665. — Measure and amount.
 - (1). In general.
 - (2). Deductions and credits.
- 1666. — Evidence.

(E) TRIAL AND JUDGMENT.

- 1680. In general.
- 1681. Reference.
- 1682. Questions of law or fact.

382T. TRADEMARKS

IX. ACTIONS AND PROCEEDINGS.(Cont'd)

- 1683. — In general.
- 1684. — Infringement in general.
- 1685. — Unfair competition in general.
- 1686. — Dilution.
- 1687. — Misuse of internet domain names; cybersquatting.
- 1688. — Creation and priority of rights.
- 1689. — Marks protected.
- 1690. — Secondary meaning.
- 1691. — Similarity; likelihood of confusion.
- 1692. — Knowledge, intent, and motive; bad faith.
- 1693. — Trade dress.
- 1694. — Defenses, excuses, and justifications.
- 1695. Instructions.
- 1696. Findings.
- 1697. Judgment and relief.

(F) INJUNCTIONS.

- 1700. In general.
- 1701. Preliminary or temporary injunctions.
- 1702. — In general.
- 1703. — Discretion.
- 1704. — Grounds and subjects of relief.
 - (1). In general.
 - (2). Infringement in general.
 - (3). Unfair competition in general.
 - (4). Passing off or palming off.
 - (5). Counterfeiting.
 - (6). Dilution.
 - (7). Misuse of internet domain names; cybersquatting.
 - (8). Ownership; marks protected.
 - (9). Similarity; likelihood of confusion.
 - (10). Trade dress.
- 1705. — Defenses.
 - (1). In general.
 - (2). Laches and estoppel.
- 1706. — Persons who may be restrained.
- 1707. — Proceedings.
 - (1). In general.
 - (2). Pleading.
 - (3). Evidence in general.
 - (4). Presumptions and burden of proof.

IX. ACTIONS AND PROCEEDINGS.(Cont'd)

- (5). Admissibility.
- (6). Weight and sufficiency.
- (7). Hearing and determination.
- 1708. — Conditions on granting or refusing; bonds.
- 1709. — Scope and extent of relief.
- 1710. — Construction and operation.
- 1711. — Continuing, modifying, vacating, or dissolving.
- 1712. Permanent injunctions.
- 1713. — In general.
- 1714. — Grounds and subjects of relief.
 - (1). In general.
 - (2). Infringement.
 - (3). Unfair competition.
 - (4). Dilution.
 - (5). Misuse of internet domain names; cybersquatting.
 - (6). Trade dress.
- 1715. — Defenses or objections.
 - (1). In general.
 - (2). Cessation of violation.
- 1716. — Evidence.
- 1717. — Scope and extent of relief.
 - (1). In general.
 - (2). Infringement in general.
 - (3). Unfair competition in general.
 - (4). Dilution.
 - (5). Misuse of internet domain names; cybersquatting.
 - (6). Trade dress.
 - (7). Persons who may be restrained.
 - (8). Territorial limits.
- 1718. — Construction and operation.
- 1719. — Amendment and modification.
- 1720. Violation and enforcement; contempt.
- 1721. — In general.
- 1722. — Acts constituting violation.
- 1723. — Proceedings.
- 1724. — Punishment.

(G) COSTS.

- 1750. In general.
- 1751. Amount and items in general.
- 1752. Attorney fees.
- 1753. — In general.
- 1754. — Grounds.
 - (1). In general.

385. TREATIES

IX. ACTIONS AND PROCEEDINGS.(Cont'd)

- (2). Exceptional cases; intent or bad faith.

1755. — Amount, rate, and items.
1756. — Proceedings.

X. OFFENSES AND PENALTIES.

1780. In general.
1781. Constitutional and statutory provisions.
1782. — In general.
1783. — Purpose and construction in general.
1784. — Validity.
1785. — Retroactive operation.
1786. Offenses in general.
1787. False, counterfeit, or imitation marks or labels.
Civil liability, see ¶1432.
1788. Criminal prosecutions.
1789. — In general.
1790. — Indictment, information, or complaint.
1791. — Evidence.
1792. — Trial.
1793. — Sentencing and punishment.
1794. Penalties; actions and proceedings.

XI. TRADEMARKS AND TRADE NAMES ADJUDICATED.

1800. Alphabetical listing.

384. TREASON

SUBJECTS INCLUDED

- Breach of allegiance by levying war against the government, adhering to or aiding its enemies, etc., and concealment of such treasonable acts of others
Nature and elements of the crimes of treason and misprision of treason
Nature and extent of criminal responsibility therefor, and grounds of defense
Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Conspiracies, see CONSPIRACY
Seditious acts and practices, insurrections, revolts, etc., see INSURRECTION AND SEDITION

1. Nature and elements in general.
2. Constitutional and statutory provisions.
3. Intent.
4. Sovereignty offended.
5. Levying war.
6. Adhering or giving aid and comfort to enemies.
7. Inciting and persuading others.
8. Misprision and concealment of treason.
9. Defenses.
10. Persons liable.
11. Preliminary proceedings in prosecution.
12. Indictment or information.
13. Evidence.
14. Trial.

385. TREATIES

SUBJECTS INCLUDED

Agreements between independent nations, whether designated as treaties or as conventions, compacts, etc.
Nature and extent of treaty-making power
Making and abrogation of treaties, etc.
Requisites, validity, construction, operation and effect of such agreements
Violations of treaty obligations

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Diplomatic officers, rights and powers, see AMBASSADORS AND CONSULS
Indian tribes, treaties with, see INDIANS
International law in general, and international organizations and tribunals, see INTERNATIONAL LAW
Particular subjects, treaty provisions relating to, see EXTRADITION AND DETAIN-

385. TREATIES

ERS, PUBLIC LANDS, CARRIERS, CUSTOMS DUTIES, GAME and other specific topics

War, termination by peace treaty, see WAR AND NATIONAL EMERGENCY

1. Nature and grounds of obligation.
2. Power to make.
3. Negotiation and ratification.
4. Requisites and validity.
5. Duration, suspension, and termination.
6. Modification, abrogation, or dissolution.
7. Construction and operation in general.
8. Construction and operation of particular provisions.
9. Time of taking effect.
10. Retroactive operation.
11. Operation as to laws inconsistent with or repugnant to treaty provisions.
12. Self-executing provisions.
13. Performance and enforcement of provisions.
14. Violation.

386. TRESPASS

SUBJECTS INCLUDED

Injuries to person, property, or rights, committed with force, not constituting or not regarded as a tort or offense of any distinct class

Justification or excuse for such acts

Nature and extent of liability for such injuries

Actions of trespass and like actions for damages for trespasses

Criminal responsibility for malicious or wanton trespass, and prosecution and punishment thereof as a public offense

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Animals, liabilities for trespass by, see ANIMALS

Assault and battery, see ASSAULT AND BATTERY

Case, action on, see ACTION ON THE CASE

Distinction between action of trespass and other forms of actions, see ACTION

False imprisonment, see FALSE IMPRISONMENT

Forcible entry and detainer, proceedings in actions for, see FORCIBLE ENTRY AND DETAINER, LANDLORD AND TENANT

Indian lands, issues peculiar to, see INDIANS ¶199

Negligence toward trespassers and licensees, see NEGLIGENCE, RAILROADS, and other specific topics

Officers' rights, powers, and liabilities in execution of process, see SHERIFFS AND CONSTABLES

Trespass to try title, see TRESPASS TO TRY TITLE

I. ACTS CONSTITUTING TRESPASS AND LIABILITY THEREFOR,

¶1-15.

II. ACTIONS, ¶16-75.

(A) RIGHT OF ACTION AND DEFENSES, ¶16-31.

(B) PROCEEDINGS IN GENERAL, ¶32-43.

(C) EVIDENCE, ¶44-46.

(D) DAMAGES, ¶47-63.

(E) TRIAL, ¶64-70.

(F) JUDGMENT, ¶71-73.

(G) REVIEW, ¶74.

(H) COSTS, ¶75.

III. CRIMINAL RESPONSIBILITY, ¶76-91.

I. ACTS CONSTITUTING TRESPASS AND LIABILITY THEREFOR.

1. Nature and elements of trespass in general.
- 1.5. What law governs.
- 1.6. Preemption.
2. Intent.
3. Force.
4. Trespass to the person.
5. Trespass to personal property.
6. — In general.
7. — Destruction of or injury to property.
8. — Taking, carrying away, or detaining property.
9. Trespass to real property.

386. TRESPASS

I. ACTS CONSTITUTING TRESPASS AND LIABILITY THEREFOR.(Cont'd)

10. — In general.
11. — Property and rights subject of trespass.
12. — Entry.
13. — Wrongful act after rightful entry and trespass ab initio.
14. — Injury to property.
15. — Mesne profits.

II. ACTIONS.

(A) RIGHT OF ACTION AND DEFENSES.

16. Nature and scope of remedy in general.
17. Particular forms of action of trespass.
18. Statutory provisions and remedies.
19. Title to support action.
 - (5). In general.
 - (1). Necessity and sufficiency of title in general.
 - (2). Possession as evidence of title, and adverse possession.
 - (3). Equitable title.
 - (4). Exception or reservation in deed.
 - (5). License.
 - (6). Tax titles.
 - (7). Interests in public lands.
 - (8). Statutory action for cutting trees.
 - (9). Personal property.
20. Possession or right of possession of plaintiff.
 - (5). In general.
 - (1). Necessity and effect in general.
 - (2). Title without actual possession.
 - (3). Possession without title.
 - (4). Sufficiency of possession.
 - (4.1). — In general.
 - (5). — Possession of part of tract or of neighboring tract.
 - (6). — Entry or re-entry.
 - (7). Possession to support statutory action for cutting trees.
 - (8). Personalty.
21. Conditions precedent.
22. Defenses.
23. — In general.
24. — Exercise of authority or duty.
25. — Consent or license.
26. — Defense of person or property.

II. ACTIONS.(Cont'd)

27. — Title or right of possession of defendant or third person.
29. Persons entitled to sue.
30. Persons liable.
31. Joint and several liability.

(B) PROCEEDINGS IN GENERAL.

32. Jurisdiction of subject-matter.
33. Jurisdiction of the person.
34. Venue.
35. Time to sue.
See also LIMITATION OF ACTIONS.
36. Parties plaintiff.
37. Parties defendant.
38. Process and appearance.
39. Mode and form of pleading in general.
40. Declaration, complaint, or petition.
 - (1). In general.
 - (2). Allegations of title and possession.
 - (3). Description of property involved.
 - (4). Statement of acts constituting trespass.
 - (5). Allegations as to damages.
41. Plea or answer.
42. Replication or reply and subsequent pleadings.
43. Issues, proof, and variance.
 - (5). In general.
 - (1). Issues raised by and evidence admissible under pleadings.
 - (1.1). — In general.
 - (2). — General issue or general denial.
 - (3). Matters to be proved.
 - (4). Variance between allegations and proof.

(C) EVIDENCE.

44. Presumptions and burden of proof.
45. Admissibility.
 - (1). In general.
 - (2). Ownership and possession.
 - (3). Acts constituting and place of trespass.
 - (4). Consent or license.
 - (5). Damages.
 - (6). Statutory action for cutting trees.
46. Weight and sufficiency.
 - (1). In general.

386. TRESPASS

II. ACTIONS.(Cont'd)

- (2). Title and possession.
- (3). Damages.

(D) DAMAGES.

- 47. Grounds and elements of compensatory damages in general.
- 48. Injuries to the person.
- 49. Destruction or loss of or injuries to personal property.
- 50. Entry on and injuries to real property.
- 51. Continuing trespass to real property.
- 52. Cutting and removal of trees.
- 53. Mesne profits.
- 54. Aggravation of damages.
- 55. Mitigation of damages.
- 56. Exemplary damages.
- 57. Amount awarded.
- 58. Inadequate and excessive damages.
- 59. Grounds for multiple damages.
- 60. — In general.
- 61. — Cutting and removal of trees.
- 62. Penalties as damages.
- 62.1. — In general.
- 63. — Cutting and removal of trees.

(E) TRIAL.

- 64. Dismissal or nonsuit before trial.
- 65. Scope of inquiry and powers of court.
- 67. Questions for jury.
- 68. Instructions.
 - (1). In general.
 - (2). Statutory action for cutting trees.
- 69. Verdict and findings.

(F) JUDGMENT.

- 71. In general.
- 72. Form and requisites.
- 73. Operation and effect.

(G) REVIEW.

- 74. In general.

(H) COSTS.

- 75. In general.

III. CRIMINAL RESPONSIBILITY.

- 76. Nature and elements of offenses in general.

III. CRIMINAL RESPONSIBILITY.(Cont'd)

- 77. Statutory provisions.
- 78. Property and rights subject of trespass.
- 79. Acts constituting criminal trespass in general.
- 80. Malicious, willful, or wanton trespass.
- 81. Trespass after warning or notice.
- 82. Forcible trespass.
- 83. Cutting and removal of timber.
- 84. Defenses.
- 85. Persons liable.
- 87. Indictment or information.
- 88. Evidence.
- 89. Trial.
- 91. Sentence and punishment.

387. TRESPASS TO TRY TITLE

SUBJECTS INCLUDED

Actions for recovery of specific real property, founded on right to damages for trespass thereon, where the ownership is disputed

Nature and scope of the remedy in general

Grounds of such actions and defenses thereto

By and against whom and as to what property they may be maintained

Procedure therein

Incidental recovery for use and occupation, profits, damages, improvements, etc.

Verdict and judgment and enforcement thereof, and costs in such actions

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Damages merely, actions for based on trespass, see TRESPASS

Forcible entry, unlawful detainer, etc., actions founded on, see FORCIBLE ENTRY AND DETAINER, LANDLORD AND TENANT

Mesne profits, etc., incidental to recovery of possession, actions of trespass for, see ENTRY, WRIT OF, EJECTMENT, REAL ACTIONS

387. TRESPASS TO TRY TITLE

Possession, actions founded on right of, together with right to damages for deprivation thereof, see EJECTMENT

Real actions in general—

Founded on mere right of possession, see ENTRY, WRIT OF

Founded on right of property, see REAL ACTIONS

I. RIGHT OF ACTION AND DEFENSES, ¶1-22.

II. PROCEEDINGS, ¶23-50.

III. DAMAGES, USE AND OCCUPATION, IMPROVEMENTS, AND TAXES, ¶51-60.

I. RIGHT OF ACTION AND DEFENSES.

1. Nature and scope of remedy.
3. Property which may be subject of action.
4. Grounds of action and conditions precedent in general.
5. Title to support action.
6. — In general.
 - 6.1. — Sufficiency in general.
 - 6.2. — Title acquired after commencement of suit.
7. — Adverse possession.
8. — Interest in public lands.
9. — Paper title.
10. — Equitable title.
11. — Title from common source.
12. Right of plaintiff to possession.
13. Possession of defendant.
14. Demand or notice to quit.
15. Defenses.
 16. — In general.
 17. — Adverse possession.
 18. — Title or right of possession of third person.
 19. — Equitable defenses.
 20. — Set-off and counterclaim.
 21. Successive actions.
 22. Cross-actions.

II. PROCEEDINGS.

23. Jurisdiction.
24. Venue.
25. Time to sue, limitations, and laches.
See also LIMITATION OF ACTIONS.
26. Parties plaintiff.

II. PROCEEDINGS.(Cont'd)

27. Parties defendant.
28. Intervention or bringing in of warrantor or others.
29. Process and appearance.
30. Surveys.
31. Pleading.
 - 31.1. — In general.
32. — Declaration or petition.
33. — Plea or answer and subsequent pleadings.
34. — Disclaimer.
35. — Issues, proof, and variance.
 - (.5). In general.
 - (1). Issues, and evidence admissible under pleadings in general.
 - (2). Matters provable under plea of not guilty, or general issue.
 - (3). Evidence admissible under abstracts of title filed in case.
 - (4). Variance.
36. Filing abstract of title.
37. Evidence.
 - 37.1. — In general.
38. — Presumptions and burden of proof.
 - (.5). In general.
 - (1). Title in general.
 - (2). Title from common source.
 - (3). Possession or right thereto.
39. — Admissibility in general.
 - (.5). In general.
 - (1). Title in general.
 - (2). Title from common source.
 - (3). Possession or right thereto.
 - (4). Identity and description of property.
40. — Documentary evidence.
 - (1). In general.
 - (2). Bonds for title, leases, and contracts in general.
 - (3). Certificates for public lands, and proceedings in land office.
 - (4). Private deeds and conveyances, and records thereof.
 - (5). Judicial proceedings, and sales under order of court.
 - (6). Field notes.
 - (7). Abstract of title filed in case.
41. — Weight and sufficiency.

387. TRESPASS TO TRY TITLE

II. PROCEEDINGS.(Cont'd)

- (1). In general.
- (2). Title from common source.
- (3). Identity and description of property.
- (4). Identity of persons.
- 42. Trial.
- 42.1. — In general.
- 44. — Questions for jury.
- 45. — Instructions.
 - (1). In general.
 - (2). Identity of persons or property.
- 46. — Verdict and findings.
- 47. Judgment.
 - (1). In general.
 - (2). Effect of disclaimer.
 - (3). Relief to defendants.
- 48. Execution and enforcement of judgment.
- 50. Costs.

III. DAMAGES, USE AND OCCUPATION, IMPROVEMENTS, AND TAXES.

- 51. Statutory provisions.
- 52. Damages for entry on or injuries to property.
- 53. Use and occupation.
- 55. Improvements.
- 56. — In general.
- 57. — Possession and good faith as grounds for compensation.
- 58. — Set-off against value of use and occupation.
- 59. — Proceedings for recovery of compensation.
- 60. Reimbursement of taxes paid.

388. TRIAL

SUBJECTS INCLUDED

Judicial examination and determination of issues in civil cases, more particularly of issues of fact by courts sitting with or without a jury

Bringing cases to trial, notices of trial, notes of issue, and calendars and lists of causes for trial

Course and order of proceedings at trials in general

Reception of evidence and objections thereto

Arguments and conduct of counsel

Relative functions of court and jury

Instructions to juries in general

Custody and conduct of jury

Verdicts or other findings of juries

Findings and decisions by courts on trials without a jury

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Adjournment or postponement of trial, see PRETRIAL PROCEDURE

Administrative hearings, see ADMINISTRATIVE LAW AND PROCEDURE, LABOR AND EMPLOYMENT, and other specific topics

Arbitrators, umpires, etc., hearings by, see ALTERNATIVE DISPUTE RESOLUTION, LABOR AND EMPLOYMENT

Bankrupt or insolvent acts, hearings and proceedings under, see BANKRUPTCY, CREDITORS' REMEDIES ¶1183

Courts of special or limited jurisdiction, hearings in, see ADMIRALTY, COURTS, EQUITY, and other specific topics

Criminal cases, trial in, see CRIMINAL LAW and specific topics relating to particular offenses

Evidence, rules of, see EVIDENCE, CRIMINAL LAW and specific topics covering relevancy and sufficiency of particular evidence

Federal Rules of Civil Procedure affecting trial, see FEDERAL CIVIL PROCEDURE

Instructions to jury, questions peculiar to particular subject matter, see AUTOMOBILES and other specific topics

Jury trial, constitutional right, and selection, impaneling and swearing jury, see JURY

Justices of the peace, trials before, see JUSTICES OF THE PEACE

Motions, demurrers and similar incidental proceedings, hearings on, see MOTIONS, PLEADING, PROCESS, and other specific topics

388. TRIAL

Particular causes or forms of action, or defenses or matters of fact, trials on issues and particularly questions of law or fact, see AUTOMOBILES and other specific topics

Place of trial, see VENUE

Pretrial conference, see PRETRIAL PROCEDURE

Referees, trials by, see REFERENCE

Submissions of controversies, hearings on, see SUBMISSION OF CONTROVERSY

Witnesses, attendance and examination, see WITNESSES

- I. NOTICE OF TRIAL AND PRELIMINARY PROCEEDINGS, ¶1-8.
- II. DOCKETS, LISTS, AND CALENDARS, ¶9-17.
- III. COURSE AND CONDUCT OF TRIAL IN GENERAL, ¶18.1-31.
- IV. RECEPTION OF EVIDENCE, ¶32-105.
 - (A) INTRODUCTION, OFFER, AND ADMISSION OF EVIDENCE IN GENERAL, ¶32-58.
 - (B) ORDER OF PROOF, REBUTTAL, AND REOPENING CASE, ¶59-72.
 - (C) OBJECTIONS, MOTIONS TO STRIKE OUT, AND EXCEPTIONS, ¶73-105.
- V. ARGUMENTS AND CONDUCT OF COUNSEL, ¶106-133.
- VI. TAKING CASE OR QUESTION FROM JURY, ¶134-181.
 - (A) QUESTIONS OF LAW OR OF FACT IN GENERAL, ¶134-149.
 - (B) DEMURRER TO EVIDENCE, ¶150-158.
 - (C) DISMISSAL OR NONSUIT, ¶159-166.
 - (D) DIRECTION OF VERDICT, ¶167-181.
- VII. INSTRUCTIONS TO JURY, ¶182-296.
 - (A) PROVINCE OF COURT AND JURY IN GENERAL, ¶182-201.
 - (B) NECESSITY AND SUBJECT-MATTER, ¶202-219.
 - (C) FORM, REQUISITES, AND SUFFICIENCY, ¶220-247.
 - (D) APPLICABILITY TO PLEADINGS AND EVIDENCE, ¶248-254.
 - (E) REQUESTS OR PRAYERS, ¶255-269.

- VII. INSTRUCTIONS TO JURY—Cont'd
 - (F) OBJECTIONS AND EXCEPTIONS, ¶270-284.
 - (G) CONSTRUCTION AND OPERATION, ¶285-296.
- VIII. CUSTODY, CONDUCT, AND DELIBERATIONS OF JURY, ¶297-317.
- IX. VERDICT, ¶318-366.
 - (A) GENERAL VERDICT, ¶318-345.
 - (B) SPECIAL INTERROGATORIES AND FINDINGS, ¶346-366.
- X. TRIAL BY COURT, ¶367-405.
 - (A) HEARING AND DETERMINATION OF CAUSE, ¶367-387.
 - (B) FINDINGS OF FACT AND CONCLUSIONS OF LAW, ¶388-405.
- XI. WAIVER AND CORRECTION OF IRREGULARITIES AND ERRORS, ¶406-427.

I. NOTICE OF TRIAL AND PRELIMINARY PROCEEDINGS.

- 1. Condition of cause in general.
- 2. Trial of causes together.
- 3. Separate trials in same cause.
 - (1). In general.
 - (2). Discretion of court.
 - (3). Counterclaims and cross-claims.
 - (4). Particular parties, separate trial as to.
 - (5). Particular issues, separate trial of.
 - (5.1). — In general.
 - (6). — Legal and equitable issues.
 - (7). Request or application.
- 4. Order of trial of separate issues.
- 5. Time or term of court for trial.
- 6. Notice of trial.
 - (1). In general.
 - (2). New notice after amendment.
 - (3). Effect of continuance or adjournment.
- 7. Note of issue.

II. DOCKETS, LISTS, AND CALENDARS.

- 9. Trial dockets or calendars in general.
 - (1). In general.
See also PRETRIAL PROCEDURE ¶741-753.
 - (2). Notice of setting cause for trial.
- 10. Causes for particular dockets.
- 11. Transfer of causes.
 - (1). In general.

388. TRIAL

II. DOCKETS, LISTS, AND CALENDARS.(Cont'd)

- (2). Transfer from law to equity docket.
- (3). Transfer from equity to law docket.
- 12. Short-cause calendars.
 - (1). In general.
 - (2). Striking cause from short-cause calendar.
- 13. Preferred causes.
 - (1). In general; discretion of court.
 - (2). Nature of action.
 - (3). Nature or circumstances of parties.
 - (3.1). — In general.
 - (4). — Age or disability; financial condition.
 - (5). Causes over which preference may be had.
 - (6). Proceedings to procure preference in general.
 - (7). Time for application or notice; laches.
 - (8). Notice.
- 14. Striking cause from docket.
- 15. Order of calling and hearing causes.
- 16. Holding or passing cause pending engagement of counsel.
- 17. Disposition of causes passed or continued.

III. COURSE AND CONDUCT OF TRIAL IN GENERAL.

- 18.1. In general.
- 18.2. Nature and purpose of trial in general.
- 18.3. Role and obligations of judge.
- 18.4. — In general.
- 18.5. — Discretion.
- 18.6. — Order, decorum, and efficiency of proceedings.
- 18.7. Fair and impartial trial in general.
- 18.8. Requisites of fair trial.
- 18.9. Time limitations.
- 18.10. Management of courtroom in general.
- 18.11. Seating in court.
- 18.12. — In general.
- 18.13. — Counsel table.
- 18.14. Security.
- 18.15. Conduct of or affecting witnesses.

III. COURSE AND CONDUCT OF TRIAL IN GENERAL.(Cont'd)

- 18.16. — In general.
- 18.17. — Appearance and attire.
- 18.18. — Conduct of witness.
- 18.19. — Restraint of witness.
- 18.20. — Protection of witness.
- 18.21. Conduct of or affecting parties.
 - 18.22. — In general.
- 18.23. — Appearance and attire.
- 18.24. — Conduct of party.
- 18.25. — Protection of party.
- 18.26. Experts and others appointed to assist court.
- 18.27. Ex parte communications.
- 18.28. — In general.
- 18.29. — Particular cases.
- 18.30. Mistrial.
- 18.31. — In general.
- 18.32. — Discretion of court.
- 18.33. — Grounds in general.
- 18.34. — Particular cases.
 - (1). In general.
 - (2). Evidentiary matters.
 - (3). Witnesses.
 - (4). — In general.
 - (5). — Examination.
 - (6). — Cross-examination, impeachment, and bolstering.
 - (7). — Unresponsive, unsolicited, and unexpected testimony.
 - (8). — Absence of witness.
 - (9). Events causing sympathy or prejudice, in general.
 - (10). — In general.
 - (11). — Conduct of witness causing sympathy or prejudice.
 - (12). — Conduct of party or persons associated with party causing sympathy or prejudice.
- 18.35. — Necessity and sufficiency of motion or request; time for motion.
- 18.36. Gag orders and similar restraints.
- 19. Presence of judge.
- 20. Publicity of proceedings.
- 21. Presence of parties and counsel.
- 22. Appointment and services of interpreter.
- 23. Appointment and services of stenographer.
- 25. Right to open and close.

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III. COURSE AND CONDUCT OF TRIAL IN GENERAL.(Cont'd)

- (1). In general.
 - (2). Discretion of court.
 - (3). Party introducing no evidence.
 - (4). Affirmative of issues in general.
 - (5). Necessity of introducing evidence in order to prevail.
 - (6). Several pleas or issues.
 - (7). Admissions and pleas in confession and avoidance.
 - (7.1). — In general.
 - (8). — Necessity.
 - (9). — Sufficiency of admission.
 - (10). — Mode and form of admissions.
 - (11). — Time for making or filing admission.
 - (12). — Sufficiency of plea in avoidance.
 - (13). — Set-off and counterclaim.
 - (14). — Plea of payment.
 - (15). Condition of cause after close of evidence.
 - (16). Claim of right and determination thereof.
26. Adjournments pending trial.
 27. Experiments and tests.
 28. View and inspection.
 - (1). In general.
 - (2). Discretion of court.
 - (3). Inspection of objects.
 29. Remarks of judge.
 - (1). In general.
 - (2). Comments on evidence.
 - (3). Examination, credibility, and impeachment of witnesses.
 - 29.1. Conduct of judge.
 30. Presence and conduct of bystanders.
 31. Objections and exceptions.

IV. RECEPTION OF EVIDENCE.

(A) INTRODUCTION, OFFER, AND ADMISSION OF EVIDENCE IN GENERAL.

32. Necessity and scope of proof.
33. — In general.
34. — Matters of record in cause.
35. — Stipulations and agreed statements.
36. — Matters not controverted at trial.

IV. RECEPTION OF EVIDENCE.(Cont'd)

37. — Estoppel and waiver.
38. Right of party to confront witnesses.
39. Introduction of documentary and demonstrative evidence.
40. Reading depositions.
41. Separation and exclusion of witnesses.
 - (1). In general.
 - (2). Excusing witnesses from rule.
 - (3). Parties.
 - (4). Competency of witness not placed under rule.
 - (5). Violation of rule.
42. Compelling calling of witness.
43. Admission of evidence in general.
44. Offer of proof.
45. — In general; necessity and sufficiency.
 - (1). In general.
 - (2). Necessity of presence of witness or documents or other showing of good faith of offer.
 - (3). Statement or disclosure of evidence expected.
46. — Showing grounds or purpose of admission.
 - (1). In general.
 - (2). Showing relevancy, competency, and materiality.
47. — Offer following objection and ruling thereon.
 - (.5). In general.
 - (1). Offer following exclusion.
 - (2). Renewal of offer.
48. — Evidence inadmissible in part or for particular purpose.
49. — Rulings on offers.
50. Presence of jury during argument as to admission.
51. Provisional or conditional admission.
52. Effect of admission of evidence.
53. — In general.
54. — Restriction to special purpose.
 - (1). In general.
 - (2). Coparties.
 - (3). Impeaching evidence.
55. Exclusion of improper evidence.
56. Cumulative evidence in general.

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IV. RECEPTION OF EVIDENCE.(Cont'd)

- 57. Number of witnesses.
- 58. Withdrawal of evidence.
- (B) ORDER OF PROOF, REBUTTAL, AND REOPENING CASE.**
- 59. Order of admission in general.
 - (1). In general.
 - (2). Discretion of court.
- 60. Evidence dependent on preliminary proof.
 - (1). In general.
 - (2). Proof of agency or partnership.
- 61. Scope of evidence in chief.
- 62. Evidence in rebuttal.
 - (1). In general; grounds for admission.
 - (2). Scope of evidence in rebuttal.
 - (3). Discretion of court.
- 63. Admission in rebuttal of evidence proper in chief.
 - (1). In general.
 - (2). Discretion of court.
 - (3). Cumulative or corroborative evidence.
- 64. Evidence in reply or surrebuttal.
- 65. Reopening case for further evidence.
- 66. — In general.
- 67. — After party offering evidence has rested.
- 68. — After close of evidence.
 - (1). In general.
 - (2). During argument.
 - (3). After close of argument.
- 69. — After demurrer to evidence or motion for nonsuit or verdict.
- 70. — After submission of case to jury.
- 71. — After verdict.
- 72. — Proceedings after reopening case.

(C) OBJECTIONS, MOTIONS TO STRIKE OUT, AND EXCEPTIONS.

- 73. Right to object.
- 74. — In general.
- 75. — Estoppel or waiver.
- 76. Time for objection.
- 77. Mode of making objection.
- 78. — In general.
- 79. — Repetition.
- 80. Sufficiency and scope of objection.

IV. RECEPTION OF EVIDENCE.(Cont'd)

- 81. — In general.
- 82. — General or specific.
- 83. — Statement of grounds.
 - (1). In general.
 - (2). Incompetency, irrelevancy, and immateriality.
 - (3). Repetition of statement of grounds.
- 84. — Scope and questions raised.
 - (1). In general.
 - (2). Expert or opinion evidence.
 - (3). Documentary evidence.
 - (3.1). — In general.
 - (4). — General objection.
 - (5). Parol and secondary evidence.
 - (6). Objection to question as extending to answer.
- 85. — Evidence admissible in part.
- 86. — Evidence admissible for special purpose.
- 87. — Evidence admissible for or against part of several coparties.
- 88. Motion to strike out.
- 89. — In general.
- 90. — Necessity for motion.
- 91. — Necessity of previous objection.
- 92. — Time for motion.
- 93. — Form and requisites.
- 94. — Statement of grounds.
- 95. — Scope and questions raised.
- 96. — Evidence admissible in part.
- 97. — Evidence elicited by party moving to strike out.
- 98. Ruling or order.
- 99. Exceptions.
- 100. — In general.
- 101. — Time for exception.
- 102. — Taking and noting.
- 103. — Sufficiency and scope.
- 104. — Operation and effect.
- 105. Effect of failure to object or except.
 - (1). In general.
 - (2). Nature of evidence in general.
 - (3). Expert and other opinion evidence.
 - (4). Documentary evidence.
 - (5). Parol and secondary evidence.

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IV. RECEPTION OF EVIDENCE.(Cont'd)

- (6). Excluding or striking out on court's own motion.

V. ARGUMENTS AND CONDUCT OF COUNSEL.

- 106. Control by court in general.
- 107. Representation of party by counsel.
- 108. Right to address jury.
- 108.5. Proceedings for impaneling jury.
- 109. Scope and effect of opening statement.
- 110. Presentation of evidence.
- 111. Scope and effect of summing up.
- 112. Limiting scope or time of argument.
- 113. Statements as to facts, comments, and arguments.
- 114. — In general.
- 115. — Stating or reading and commenting on proceedings in cause.
 - (1). In general.
 - (2). Special interrogatories.
 - (3). Pleadings and proceedings relating thereto.
 - (4). Stating, reading, or replaying evidence.
 - (5). Proceedings at former trial or on appeal.
- 116. — Exhibits and illustrations.
- 117. — Authorities on subject involved.
- 118. — Arguing or reading law to jury.
- 119. — Matters not within issues.
- 120. — Matters not sustained by evidence.
 - (1). In general.
 - (2). Nature of remark or comment.
 - (3). Evidence rejected or excluded.
- 121. — Comments on evidence or witnesses.
 - (1). In general.
 - (2). Deductions or inferences from evidence.
 - (3). Weight and sufficiency of evidence.
 - (4). Remarks reflecting on credibility of witnesses.
 - (5). Evidence improperly admitted.
- 122. — Comments on failure to produce evidence or call witness.
- 123. — Comments on failure of party to testify.

V. ARGUMENTS AND CONDUCT OF COUNSEL.(Cont'd)

- 124. — Comments on character or conduct of party.
- 125. — Appeals to sympathy or prejudice.
 - (1). In general.
 - (2). Appeals to race or local prejudice.
 - (3). Appeals to prejudice against corporations.
 - (4). Reference to wealth or poverty of parties.
 - (5). Reference to forlorn or helpless condition of parties.
- 126. — Abusive language.
- 127. — Reference to protection of party by insurance or other indemnity.
- 128. — Instructions to jury as to their duties.
- 129. Retaliatory statements and remarks.
- 130. Evidence to rebut statements.
- 131. Objections and exceptions.
 - (.5). In general.
 - (1). Necessity.
 - (2). Time for taking.
 - (3). Requisites and sufficiency.
- 132. Withdrawal or correction of objectionable matter.
- 133. Action of court.
 - 133.1. — In general; duty of court.
 - 133.2. — Sufficiency of action in general.
 - 133.3. — Sustaining objection.
 - 133.4. — Reprimanding counsel and directing them to desist from improper argument.
 - 133.5. — Stating that remarks are improper.
 - 133.6. — Instruction or admonition to jury.
 - (1). In general.
 - (2). Presentation of evidence.
 - (3). Statements as to facts, comments, and argument.
 - (3.1). — In general.
 - (4). — Particular statements or remarks.
 - (5). — Matters outside issues or evidence.
 - (6). — Comments on evidence or witnesses or on failure to produce evidence.

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**V. ARGUMENTS AND CONDUCT
OF COUNSEL.(Cont'd)**

- (7). — Appeals to sympathy or prejudice.
- (8). — Reference to insurance or indemnity.

**VI. TAKING CASE OR QUESTION
FROM JURY.**

**(A) QUESTIONS OF LAW OR
OF FACT IN GENERAL.**

- 134. Functions as judges of law and fact in general.
- 136. Questions of law or fact in general.
 - (1). In general.
 - (2). Variance.
 - (3). Construction of writings.
 - (4). Foreign laws.
- 137. Mixed questions of law and fact.
- 138. Preliminary or introductory questions of fact.
- 139.1. Evidence.
 - (5). In general.
 - (1). Province of court and jury.
 - (1.1). — In general.
 - (2). — Probative effect in general.
 - (3). — Weight of evidence.
 - (4). — Sufficiency of evidence.
 - (5). Submission to or withdrawal from jury.
 - (5.1). — In general.
 - (6). — “Some”, “slight”, or “any” evidence.
 - (7). — “No” evidence; total failure of proof.
 - (8). — Scintilla of evidence.
 - (9). — Substantial evidence.
 - (10). — Weight and preponderance of evidence.
 - (11). — Effect of burden of proof.
 - (12). — Speculation or conjecture; choice of probabilities or theories.
 - (13). — Prima facie case.
 - (14). — Sufficiency to present issue of fact.
 - (15). — Sufficiency to warrant recovery, or to establish cause of action or defense.

**VI. TAKING CASE OR QUESTION
FROM JURY.(Cont'd)**

- (16). — Sufficiency to support verdict, finding, or judgment.
- (17). — Insufficiency to support other verdict; conclusive evidence.
- (18). — Inherently improbable or incredible evidence; physical facts.
- (19). — Positive or negative evidence.
- (20). — Circumstantial evidence; presumptions.
- (21). Evidence erroneously admitted.
- (22). Evidence to support cause of action against coparties.
- (23). Evidence to support part of issues.
- 140. Credibility of witnesses.
 - (1). In general.
 - (2). Parties and persons interested.
- 141. Uncontroverted facts or evidence.
- 142. Inferences from evidence.
- 143. Conflicting evidence.
- 144. Amount of recovery.
- 145. Withdrawal of particular counts or issues.
- 146. Withdrawal of juror.
- 147. Reservation of questions of law.
- 148. Requests for submission of issues to jury.
- 149. Effect of failure to question sufficiency of evidence.
- (B) DEMURRER TO EVIDENCE.**
- 150. Nature and grounds in general.
- 151. Power of court.
- 152. Right to demur.
- 153. Time for demurrer.
- 154. Form and requisites and joinder in demurrer.
- 155. Operation and effect.
- 156. Hearing and determination.
 - (1). In general.
 - (2). Consideration of evidence in general.
 - (3). Admissions and inferences.
- 157. Exceptions to rulings.

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**VI. TAKING CASE OR QUESTION
FROM JURY.(Cont'd)**

158. Motion to strike out or exclude evidence.

(C) DISMISSAL OR NONSUIT.

- 159. Nature and grounds in general.
- 160. Power of court.
- 161. Right to move.
- 162. Time for motion.
- 163. Form and requisites of motion.
- 164. Operation and effect of motion.
- 165. Hearing and determination of motion.
- 166. Exceptions to rulings.

(D) DIRECTION OF VERDICT.

- 167. Nature and grounds.
- 168. — In general.
- 169. — Verdict for defendant.
- 170. — Verdict for plaintiff.
- 171. Power of court.
- 172. Right to move.
- 173. Time for motion.
- 174. Form and requisites of motion or request.
- 175. Operation and effect of motion or request.
- 176. — In general.
- 177. — By both parties.
- 178. Hearing and determination.
- 179. Refusal of juror to obey direction.
- 180. Discharge of jury and decision by court.
- 181. Exceptions to rulings.

VII. INSTRUCTIONS TO JURY.

(A) PROVINCE OF COURT AND JURY IN GENERAL.

- 182. Authority to instruct jury in general.
- 183. Constitutional and statutory provisions.
- 184. Nature and scope of issues.
- 185. Statement and review of evidence by judge.
- 186. Comments by judge on evidence in general.
- 187. Credibility of witnesses.
 - (1). In general.
 - (2). Corroboration, contradiction, and inconsistent statements.
 - (3). Interest of witness.
 - (4). Character and conduct of witness.

VII. INSTRUCTIONS TO JURY.(Cont'd)

- 188. Inferences from evidence.
- 189. Hypothetical statements by judge.
- 190. Assumptions by judge as to facts.
- 191. — In general.
 - (1). In general.
 - (2). Nature of action or issue in general.
 - (3). Contracts and actions relating thereto.
 - (4). Actions relating to property.
 - (5). Actions for torts in general.
 - (6). Negligence in general.
 - (7). Personal injuries in general.
 - (8). Personal injuries in operation of railroads in general.
 - (9). Injuries to passengers.
 - (10). Injuries to servants.
 - (11). Damages and amount of recovery.
- 192. — Uncontroverted facts or evidence.
- 193. Opinion or belief of judge as to facts.
 - (1). In general.
 - (2). Nature of action or issue in general.
 - (3). Negligence.
- 194. Weight and sufficiency of evidence.
 - (1). In general.
 - (2). Nature of instruction in general.
 - (3). Positive and negative testimony.
 - (4). Admissions.
 - (5). Opinion evidence.
 - (6). Conflicting evidence.
 - (7). Uncontroverted evidence.
 - (8). Failure or absence of proof.
 - (9). Nature of action or issue in general.
 - (10). Actions relating to property.
 - (11). Contracts and actions relating thereto in general.
 - (12). Bills and notes.
 - (13). Sales.
 - (14). Torts in general.
 - (15). Negligence in general.
 - (16). Personal injuries in general.
 - (17). Personal injuries in operation of railroads in general.
 - (18). Injuries to passengers.
 - (19). Injuries to servants.

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VII. INSTRUCTIONS TO JURY.(Cont'd)

- (20). Damages or amount of recovery.
- 195. Preponderance of evidence.
- 196. Comments by judge on conduct or merits of cause or parties.
- 197. Determination of questions of law.
- 197.1. — In general.
- 198. — Duty of judge.
- 199. — Submission to jury.
- 200. Application of law to facts.
- 201. Instructions as to duties of jury.

(B) NECESSITY AND SUBJECT-MATTER.

- 202. Duty of judge in general.
- 203. Issues and theories of case in general.
 - (1). In general.
 - (2). Duty to submit all the issues.
 - (3). Affirmative and negative of issues.
 - (4). Issues withdrawn.
- 204. Statement and review of evidence in general.
- 205. Presumptions and burden of proof.
- 206. Determination of weight and sufficiency of evidence in general.
- 207. Purpose and effect of evidence.
- 208. Exclusion of evidence from consideration.
- 209. Circumstantial evidence.
- 210. Credibility of witnesses.
 - (1). In general.
 - (2). Falsity of testimony in general.
 - (3). Inconsistent and conflicting statements.
 - (4). Interest of witness.
- 211. Failure of party to testify or to call witness or produce evidence.
- 212. Preponderance of evidence.
- 213. Matters of law in general.
- 214. Law applicable to particular issues or theories.
- 215. Submission to jury for special findings.
- 216. Determination of amount of recovery.
- 217. Instructions as to duties of jury.
- 218. Influence of arguments of counsel.
- 219. Definition or explanation of terms.

(C) FORM, REQUISITES, AND SUFFICIENCY.

- 220. Time for giving instructions.
- 221. Presence of parties and counsel.

VII. INSTRUCTIONS TO JURY.(Cont'd)

- 222. Written instructions.
- 222.1. — In general.
- 223. — Necessity of writing in general, and submission to counsel.
- 224. — Requests for reduction to writing.
- 225. — Compliance with requirement as to writing in general.
 - (1). In general.
 - (2). Signing.
- 226. — Reducing oral instructions to writing.
- 227. — Reading or delivery to jury.
- 228. Form and language.
 - (.5). In general.
 - (1). Form and arrangement.
 - (2). Reference to other instructions.
 - (3). Language.
 - (4). Certainty, definiteness, and particularity.
- 229. Repetition.
- 230. Limiting number of instructions.
- 231. Sufficiency as to subject-matter.
- 232. — In general.
 - (1). In general.
 - (2). Submission to jury for special findings.
 - (3). Instructions as to duties of jury.
 - (4). Influence of argument of counsel.
 - (5). Definition of terms.
- 233. — Statement of issues.
 - (1). In general.
 - (2). Reading or use of pleadings.
 - (3). Referring jury to pleadings.
 - (4). Conflicting issues and grounds of verdict.
- 234. — Evidence and matters of fact in general.
 - (1). In general.
 - (2). Statement or summarizing facts or evidence.
 - (3). Directing verdict if the jury believes the evidence.
 - (4). Directing verdict if specified facts are proved.
 - (5). Restricting jury to evidence.
 - (6). Misstatements.
 - (7). Presumptions and burden of proof.

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VII. INSTRUCTIONS TO JURY.(Cont'd)

- (8). Failure of party to testify or to call witness or produce evidence.
- (9). Exclusion of evidence from consideration.
- 235. — Weight and effect of evidence.
 - (1). In general.
 - (2). Consideration of probabilities and inferences from evidence.
 - (3). Conflicting evidence.
 - (4). Circumstantial evidence.
 - (5). Positive and negative testimony.
 - (6). Admissions.
 - (7). Testimony of experts and other opinion evidence.
- 236. — Credibility of witnesses.
 - (1). In general.
 - (2). Falsus in uno falsus in omnibus.
 - (3). Interest of witness.
- 237. — Preponderance of evidence.
 - (1). In general.
 - (2). Qualifications of the word "preponderance."
 - (3). Degree of proof required in general.
 - (4). What constitutes and determination of preponderance.
 - (5). Weight with reference to number of witnesses.
 - (6). Requiring matters to be proved to the satisfaction of the jury.
- 238. — Matters of law.
- 239. — Amount of recovery.
- 240. Argumentative instructions.
- 241. Reading or quoting statutes, ordinances, authorities, or reported cases.
- 242. Confused or misleading instructions.
- 243. Inconsistent or contradictory instructions.
- 244. Undue prominence of particular matters.
 - (1). In general.
 - (2). Evidence and matters of fact in general.
 - (3). Nature of action or issue in general.
 - (4). Negligence and personal injuries.
 - (5). Credibility of witnesses.
 - (6). Matters of law and amount of recovery.
- 245. Appeals to sympathy or prejudice.

VII. INSTRUCTIONS TO JURY.(Cont'd)

- 246. Instructions correcting previous erroneous instructions and omissions.
- 247. Withdrawal of instructions or remarks.
- (D) APPLICABILITY TO PLEADINGS AND EVIDENCE.
- 248. Abstract instructions in general.
- 249. Application of instructions to case.
- 250. — In general.
- 251. — Pleadings and issues.
 - (1). In general.
 - (2). Nature of action or issue in general.
 - (3). Actions relating to property and for injuries thereto.
 - (4). Contracts and actions relating thereto in general.
 - (5). Contracts of sale and actions relating thereto.
 - (6). Actions on insurance contracts, policies, or certificates.
 - (7). Actions on notes.
 - (8). Actions for personal injuries.
 - (9). Amount of recovery.
- 252. — Facts and evidence.
 - (1). In general.
 - (2). Sufficiency of evidence to warrant instruction.
 - (3). Evidence excluded or withdrawn or improperly admitted.
 - (4). Nature of action or issue in general.
 - (5). Actions relating to property in general.
 - (6). Actions for torts in general.
 - (7). Negligence in general.
 - (8). Personal injuries in general.
 - (9). Injuries in operation of railroads in general.
 - (10). Injuries to passengers.
 - (11). Injuries to servants.
 - (12). Contracts and actions relating thereto in general.
 - (13). Contracts of sale and actions relating thereto.
 - (14). Actions on insurance policies.
 - (15). Bills and notes.
 - (16). Actions for personal services and commissions.

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VII. INSTRUCTIONS TO JURY.(Cont'd)

- (17). Fraud, mistake, duress, and undue influence.
- (18). Will contests.
- (19). Tender, payment, or release.
- (20). Extent of injury and amount of recovery.
- (21). Credibility of witnesses and weight of opinion evidence.
- (22). Failure of party to testify or call witness or produce evidence.
- (23). Several counts or parties.
- 253. Instructions excluding or ignoring issues, defenses, or evidence.
 - (.5). In general.
 - (1). Issues and defenses.
 - (1.1). — In general.
 - (2). — Abandonment of issue.
 - (3). — Nature of action or issue in general.
 - (4). — Actions for personal injuries.
 - (5). — Contracts and actions relating thereto.
 - (6). Excluding or ignoring facts or evidence.
 - (6.1). — In general.
 - (7). — Hypothetical statements.
 - (8). — Nature of action or issue in general.
 - (9). — Actions for personal injuries.
 - (10). — Contracts and actions relating thereto.
 - (11). Credibility of witnesses.
- 254. Instructions as to application of personal knowledge of jurors.

(E) REQUESTS OR PRAYERS.

- 255. Necessity in general.
 - (1). In general.
 - (2). Issues or theories of case.
 - (3). Evidence and matters of fact in general.
 - (4). Purpose and effect of evidence.
 - (5). Exclusion of evidence from consideration.
 - (6). Arguments and conduct of counsel.

VII. INSTRUCTIONS TO JURY.(Cont'd)

- (7). Nature of action or issue in general.
- (8). Actions relating to property in general.
- (9). Actions for torts in general.
- (10). Actions for negligence in general.
- (11). Actions for personal injuries.
- (12). Contracts and actions relating thereto.
- (13). Definition or explanation of terms.
- (14). Damages and amount of recovery.
- (15). Credibility of witnesses.
- 256. Further or more specific instructions.
 - (1). In general.
 - (2). Erroneous or misleading instructions.
 - (3). Issues or theories of case.
 - (4). Evidence and matters of fact in general.
 - (5). Purpose and effect of evidence.
 - (6). Nature of action or issue in general.
 - (7). Actions relating to property in general.
 - (8). Actions for torts in general.
 - (9). Actions for negligence in general.
 - (10). Actions for personal injuries.
 - (11). Contracts and actions relating thereto.
 - (12). Definition or explanation of terms.
 - (13). Damages and amount of recovery.
 - (14). Credibility of witnesses.
- 257. Time for asking instructions.
- 258. Form and requisites in general.
 - (1). In general.
 - (2). Number and length.
- 259. Written requests or prayers.
 - (1). In general.
 - (2). Numbering and signing.
- 260. Instructions already given.
 - (1). In general.
 - (2). Issues.
 - (3). Evidence and matters of fact.
 - (4). Credibility of witnesses.

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VII. INSTRUCTIONS TO JURY.(Cont'd)

- (5). Nature of action or issue in general.
- (6). Actions for torts in general.
- (7). Actions for negligence in general.
- (8). Personal injuries.
- (9). Contracts and actions relating thereto.
- (10). Amount of recovery.
- 261. Duty to give requested instruction; erroneous requests.
- 262. Inconsistent requests.
- 263. Presentation and allowance in general.
- 264. Withdrawal of requests.
- 265. Argument of requests.
- 266. Manner of giving instructions asked.
- 267. Modification or substitution by court.
 - (1). In general.
 - (2). Erroneous instructions.
 - (3). Nature and subject-matter of modification.
 - (4). Substitution of another instruction.
- 268. Refusal of requests.
- 269. Noting disposition of requests.

(F) OBJECTIONS AND EXCEPTIONS.

- 270. Right to object or except.
- 271. — In general.
- 272. — Estoppel or waiver.
- 273. Time for objection or exception.
- 274. Mode of making objection.
- 275. Taking and noting exception.
- 276. Sufficiency and scope of objections or exceptions to instructions given.
- 277. — In general.
- 278. — General or specific.
- 279. — Statement of grounds of objection.
- 280. — Scope and questions raised.
- 281. — Instructions correct in part.
- 282. Sufficiency and scope of exceptions to failure or refusal to instruct.
- 283. Operation and effect of objections or exceptions.
- 284. Effect of failure to object or except.

(G) CONSTRUCTION AND OPERATION.

- 285. Rules of construction in general.
- 286. Construction of particular instructions.

VII. INSTRUCTIONS TO JURY.(Cont'd)

- 287. Inadvertent errors or omissions.
- 295. Construction and effect of charge as a whole.
 - (1). In general.
 - (2). Errors in general.
 - (3). Omissions in general.
 - (4). Nature of error or omission in general.
 - (5). Issues and theories of case in general.
 - (6). Negligence in general.
 - (7). Contributory negligence and assumption of risk.
 - (8). Evidence and matters of fact in general.
 - (9). Weight and effect of evidence.
 - (10). Invasion of province of jury.
 - (11). Measure of damages or amount of recovery.
 - (12). Definition or explanation of terms.
- 296. Error in instructions cured by withdrawal or giving other instructions.
 - (1). In general.
 - (2). Issues and theories of case in general.
 - (3). Negligence in general.
 - (4). Contributory negligence.
 - (6). Assumption of risk.
 - (7). Evidence and matters of fact in general.
 - (8). Weight and effect of evidence in general.
 - (9). Invasion of province of jury.
 - (10). Credibility of witnesses.
 - (11). Measure of damages or amount of recovery.
 - (12). Definition or explanation of terms.
 - (13). Withdrawal or correction.

VIII. CUSTODY, CONDUCT, AND DELIBERATIONS OF JURY.

- 297. Attendance and custody in general.
- 298. Officer in charge.
- 299. — In general.
- 300. — Oath.
- 301. Admonition to jury or officer.
- 302. Presence during proceedings.

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**VIII. CUSTODY, CONDUCT,
AND DELIBERATIONS
OF JURY.(Cont'd)**

- 303. Separation.
- 304. Misconduct of jurors.
- 305. Misconduct of others affecting jurors.
- 306. Deliberations in general.
- 307. Taking papers or articles to jury room.
 - (1). In general.
 - (2). Pleadings and other papers part of record.
 - (3). Documentary evidence and depositions.
 - (4). Instructions.
- 308. Reading minutes of or restating testimony.
- 309. Consideration of view or inspection.
- 310. Experiments by jurors.
- 311. Application of personal knowledge of jurors.
- 312. Instructions after submission of cause.
 - (5). In general.
 - (1). Authority and duty to instruct.
 - (2). Requisites and sufficiency of instructions.
 - (3). Presence of parties and counsel.
- 313. Communications between judge and jury.
- 314. Urging or coercing agreement.
 - (1). In general.
 - (2). Conduct of officer in charge.
- 315. Manner of arriving at verdict.
- 316. Discharge for failure to agree.
- 317. Objections and exceptions.

IX. VERDICT.

(A) GENERAL VERDICT.

- 318. Necessity and sufficiency of general finding.
- 319. Verdict subject to opinion of court.
- 320. Preparation and formulation.
- 321. Rendition and reception.
- 321.5. Assent of required number of jurors.
- 322. Reduction of oral verdict to writing.
- 323. Signature.
- 324. Sealed verdict.
- 325. Polling jurors.
 - (1). In general.

IX. VERDICT.(Cont'd)

- (2). Disclosing grounds, intention, or manner of arriving at verdict.
- (3). Dissent or disagreement of jurors and resubmission of cause.
- 326. Form and language in general.
- 327. Designation of parties.
- 328. Severance as to parties.
- 329. Responsiveness to issues.
- 330. Several counts or issues.
 - (1). In general.
 - (2). Applicability and sufficiency of evidence.
 - (3). Defective, immaterial, and inconsistent counts and issues.
 - (4). Nature of counts or issues.
 - (5). Sustaining verdict on one count or as to part of issues.
- 331. Certainty in general.
- 332. Amount of recovery.
- 333. — In general.
- 334. — Interest.
- 335. Severance and apportionment of damages.
- 336. Surplusage.
- 337. Disregard of instructions.
- 338. Amendment or correction.
- 338.1. — In general.
- 339. — By jury.
 - (1). In general.
 - (2). Under advice, direction, or sanction of court.
 - (3). Remanding jury, with instructions.
 - (4). After sealing and recording verdict, and discharge or separation of jury.
- 340. — By court.
 - (1). In general.
 - (2). After discharge of jury.
 - (3). Designation of parties.
 - (4). Several counts or issues.
 - (5). Amount of recovery.
- 341. Venire de novo.
- 342. Entry and record.
- 343. Construction and operation.
- 344. Affidavits and evidence of jurors to sustain or impeach verdict.
- 345. Objections and exceptions.

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(B) SPECIAL INTERROGATORIES AND FINDINGS.

- 346. Power of jury to find specially.
- 346.1. — In general.
- 347. — Special verdict.
- 348. — Special findings accompanying general verdict.
- 349. Power and duty of court to require special findings.
 - (1). In general.
 - (2). Discretion of court.
 - (3). Submission on court's own motion.
 - (4). Directing special verdict only.
- 350. Questions to be submitted.
- 350.1. — In general.
- 350.2. — Evidentiary and ultimate facts and conclusions of law in general.
- 350.3. — Nature of action or issue in general.
 - (1). In general.
 - (2). Property, conveyances, and incumbrances.
 - (2.1). — In general.
 - (3). — Trespass to try title.
 - (4). Torts in general.
 - (5). Personal injuries.
 - (6). Injuries to property.
 - (7). Automobile cases.
 - (8). Workers' compensation.
- 350.4. — Contracts, actions and issues relating to.
 - (1). In general.
 - (2). Contracts for sale.
 - (3). Insurance.
 - (4). Contracts for services; brokers.
- 350.5. — Proximate cause of injury, issues as to.
 - (1). In general.
 - (2). Personal injuries in general.
 - (3). Automobile cases.
 - (4). Employees' injuries; workers' compensation.
 - (5). Unavoidable accident.
- 350.6. — Negligence, issues as to.
 - (1). In general.
 - (2). Personal injuries in general.
 - (3). Automobile cases.
 - (4). Carriers; railroads.
 - (5). Explosives; fires.

IX. VERDICT. (Cont'd)

- (6). Employees' injuries.
- 350.7. — Contributory negligence, issues as to.
 - (1). In general.
 - (2). Personal injuries in general.
 - (3). Automobile cases.
 - (3.1). — In general.
 - (4). — Pedestrians.
 - (5). — Passengers, guests, or occupants.
 - (6). Railroad cases.
 - (7). Employees.
 - (8). Infants.
 - (9). Injury avoidable notwithstanding contributory negligence.
 - (10). Comparative negligence.
- 350.8. — Admitted or uncontroverted facts.
- 351. Requests for special findings or interrogatories.
- 351.1. — In general; time for presenting.
- 351.2. — Necessity and sufficiency of requests.
 - (.5). In general.
 - (1). Necessity and burden of making request.
 - (1.1). — In general.
 - (2). — Particular actions or issues.
 - (3). Effect of failure to request; waiver.
 - (3.1). — In general.
 - (4). — Particular actions or issues.
 - (5). Findings by court on issues not submitted.
 - (6). Sufficiency of requests in general.
 - (7). Written requests.
 - (8). Separate requests.
 - (9). Effect of objection or exception to charge.
 - (10). Erroneous requests; modification or substitution by court.
- 351.3. — Absolute or unconditional requests for special findings only.
- 351.4. — Submission of interrogatories or proposed findings to counsel.
- 351.5. — Questions already submitted.
 - (1). In general.
 - (2). Defensive issues.

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IX. VERDICT.(Cont'd)

- (3). Nature of action or issue in general.
- (4). Contracts.
- (5). Negligence in general.
- (6). Automobile cases.
- (7). Carriers; railroads.
- (8). Employees' injuries; workers' compensation.
- 351.6. — Questions disposed of by general verdict.
- 352. Preparation and form of interrogatories or findings.
- 352.1. — In general.
 - (.5). In general.
 - (1). Form in general.
 - (2). Discretion of court.
 - (3). Nature of action or issue in general.
 - (4). Contracts.
 - (5). Negligence in general.
 - (6). Personal injuries in general.
 - (7). Automobile cases.
 - (8). Carriers; railroads.
 - (9). Employees' injuries; workers' compensation.
- 352.2. — Preparation by court or counsel.
- 352.3. — Number of interrogatories.
- 352.4. — Conformity to issues.
 - (1). In general.
 - (2). Nature of action or issue in general.
 - (3). Property, conveyances and incumbrances.
 - (4). Contracts.
 - (5). Negligence in general.
 - (6). Personal injuries in general.
 - (7). Automobile cases.
 - (8). Carriers; railroads.
 - (9). Employees' injuries; workers' compensation.
- 352.5. — Multifariousness or duplicity.
 - (1). In general.
 - (2). Grouping facts constituting single ultimate issue.
 - (3). Nature of action or issue in general.
 - (4). Contracts.
 - (5). Negligence and personal injuries in general.

IX. VERDICT.(Cont'd)

- (6). Automobile cases.
- (7). Carriers; railroads.
- (8). Employees' injuries; workers' compensation.
- 352.6. — Leading or suggestive interrogatories.
- 352.7. — Submission of interrogatories.
- 352.8. — Authentication or signature of findings.
- 352.9. — Burden of proof.
- 352.10. — Interrogatories assuming facts or on weight of evidence.
- 352.11. — Affirmative or negative form.
- 352.12. — Conclusions, generalities and questions of law.
- 352.13. — Alternatives.
- 352.14. — Opposite or conflicting issues.
- 352.15. — Uncertain, ambiguous and unexplained issues.
- 352.16. — Misleading and confusing issues.
- 352.17. — Informing jury as to effect of answers.
- 352.18. — Completeness and conclusiveness.
- 352.19. — Reference to pleadings.
- 352.20. — Dependency on other issues.
- 352.21. — Repetition and undue emphasis.
- 352.50. Assent of required number of jurors.
- 353. Amendment or modification of interrogatories.
- 354. Withdrawal of interrogatories.
- 355. Sufficiency of verdict or findings in general.
 - (1). In general.
 - (2). Definiteness and certainty.
 - (3). Ultimate and evidentiary facts and conclusions.
- 356. Failure to answer interrogatories or make findings.
 - (1). In general.
 - (2). Inferences from facts found and reference to pleadings or evidence.
 - (3). Nature of action or issue.
 - (4). Issues not supported by pleadings and evidence.
 - (5). Immaterial, inconclusive, and uncontroverted facts or issues.

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IX. VERDICT.(Cont'd)

- (6). Adverse or negative findings and disagreement by jury.
- (7). Motions and duty of court to require proper answer or findings.
- 357. Responsiveness of findings.
- 358. Inconsistent findings.
- 359. Findings inconsistent with general verdict.
 - (1). In general.
 - (2). Remedies and proceedings to determine consistency in general.
- 360. Surplusage.
- 361. Defects and errors.
- 362. Amendment or correction of findings.
- 363. Venire de novo.
 - (1). In general.
 - (2). Grounds.
- 365. Construction and operation.
 - 365.1. — In general.
 - (1). Construction and operation in general.
 - (2). Liberal or strict construction.
 - (3). Construction in connection with other matters.
 - (4). Nature of action or issue in general.
 - (5). Contracts.
 - (6). Negligence and personal injuries in general.
 - (7). Automobile cases.
 - (8). Carriers; railroads.
 - 365.2. — Construction as a whole.
 - 365.3. — Effect as evidence and conclusiveness.
 - 365.4. — Effect as general verdict or finding.
- 366. Objections and exceptions.

X. TRIAL BY COURT.

(A) HEARING AND DETERMINATION OF CAUSE.

- 367. Power and duty of court in general.
- 368. Submission of cause on stipulation or agreed statement.
- 369. Trial of special issues by jury.
- 370. — In general.
 - (1). In general.
 - (2). Authority and discretion of court in general.

X. TRIAL BY COURT.(Cont'd)

- (3). Issues to be submitted.
- 371. — Framing and settlement of issues.
- 373. — Instructions.
- 374. — Verdict.
 - (1). In general.
 - (2). Conclusiveness.
- 375. View or inspection by judge.
- 376. Reception of evidence.
- 377. — In general.
 - (1). In general.
 - (2). Reception after submission of cause.
- 378. — Objections and exceptions.
- 379. — Effect of error in admission of evidence.
- 380. — Effect of error in exclusion of evidence.
- 381. Rulings on weight and sufficiency of evidence.
- 382. — In general.
- 383. — Demurrer to evidence.
- 384. — Dismissal or nonsuit.
- 385. — Objections and exceptions.
- 386. Declarations of law.
 - (1). In general.
 - (2). Necessity.
 - (3). Applicability to pleadings and evidence.
 - (4). Requests of parties and rulings thereon.
- 387. Decision.
 - (1). In general.
 - (2). Time for rendition and filing.
 - (3). Duty to determine all the issues.

(B) FINDINGS OF FACT AND CONCLUSIONS OF LAW.

- 388. Duty to make in general.
 - (1). In general.
 - (2). Actions and proceedings in which necessary.
 - (3). Dismissal or nonsuit.
 - (4). Matters admitted by pleading or statement of facts.
 - (5). Findings on court's own motion.
- 389. Waiver.
- 390. Time for making findings.
- 391. Facts and conclusions to be found.
- 392. Requests for findings.

388. TRIAL

X. TRIAL BY COURT.(Cont'd)

- (5). In general.
- (1). Necessity for request.
- (2). Time for making request.
- (3). Form and requisites of request.
- (4). Ruling on request.
- 393. Preparation and form in general.
 - (1). In general.
 - (2). Preparation by or for court.
 - (3). Reduction to writing.
 - (4). Setting out evidence.
- 394. Separate statement of facts and law.
 - (1). In general.
 - (2). Requests for separate statement.
 - (3). Form and sufficiency of statement.
- 395. Sufficiency in general.
 - (1). In general.
 - (2). Definiteness and certainty.
 - (3). General or specific findings or conclusions.
 - (4). Extrinsic facts or papers and inferences from facts stated.
 - (5). Ultimate or evidentiary facts.
 - (6). References to pleadings and evidence.
 - (7). Conclusions of law.
 - (8). Signature of judge.
 - (9). Findings as to immaterial matters.
- 396. Conformity to pleadings, issues, and proofs.
 - (1). In general.
 - (2). Findings on issues not raised by pleadings or evidence.
 - (3). Scope of issues raised by pleadings.
 - (4). Facts and evidence in general.
 - (5). Evidence improperly admitted or admitted without objection.
 - (6). Immaterial facts or issues.
 - (7). Matters admitted or not denied.
- 397. Failure to find on particular questions.
 - (1). In general.
 - (2). Findings sufficient to sustain judgment.
 - (3). Issues not raised by pleadings.
 - (4). Issues not supported by evidence.
 - (5). Immaterial issues.

X. TRIAL BY COURT.(Cont'd)

- (6). Effect of burden of proof, and presumption as to negative findings.
- 398. Inconsistent findings and conclusions.
- 399. Defects and errors.
- 400. Amendment or correction.
 - (1). In general.
 - (2). Remedies of parties, and proceedings.
- 401. Additional findings.
- 402. Venire de novo.
- 403. Filing and record.
- 404. Construction and operation.
 - (1). In general.
 - (2). Finding of fact or conclusion of law.
 - (3). Ultimate or evidentiary facts.
 - (4). General or special findings.
 - (5). Conclusiveness and effect in general.
 - (6). Effect as verdict.
- 405. Objections and exceptions.
 - (5). In general.
 - (1). Necessity, nature, and effect.
 - (2). Time for making objection or exception.
 - (3). Form and sufficiency of objections and exceptions.

XI. WAIVER AND CORRECTION OF IRREGULARITIES AND ERRORS.

- 406. Defects and objections which may be waived or cured in general.
- 408. Irregularities in preliminary proceedings.
- 409. Irregularities in conduct of trial.
- 410. Rulings as to admissibility of evidence.
- 411. — In general.
- 412. — Admission.
- 413. — Exclusion.
- 414. — Striking out.
- 415. Misconduct of counsel.
- 416. Rulings as to weight and sufficiency of evidence.
- 417. — In general.
- 418. — Demurrer to evidence.
- 419. — Dismissal or nonsuit.
- 420. — Direction of verdict.
- 421. Instructions to jury.

**XI. WAIVER AND CORRECTION
OF IRREGULARITIES AND
ERRORS.**(Cont'd)

- 421.1. — In general.
- 423. — Instructions given.
- 424. — Failure or refusal to instruct.
- 425. Misconduct of or affecting jury.
- 426. Verdict.
- 427. Findings by court.

390. TRUSTS

SUBJECTS INCLUDED

Estates in property, the legal title or power of disposition of which is held by one or more persons, wholly or in part for the use of another or others, under an equitable obligation, express or implied, resting upon such person or persons by reason of confidence reposed in him or them, to convey, apply, or deal with such property or its profits at the will or for the benefit of such other person or persons according to the confidence so reposed

Nature and incidents of such estates

Rights, powers, duties, and liabilities of persons creating such trusts, of trustees, and of cestuis que trust or beneficiaries in general

Judicial protection and control of trust property and trustees

Remedies and proceedings relating thereto

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Business trusts, including Massachusetts trusts and real estate investment trusts, see CORPORATIONS AND BUSINESS ORGANIZATIONS XV(D)

Charitable uses, see CHARITIES

Fiduciary relation in general, and particular fiduciary personal relations, see FRAUD, GUARDIAN AND WARD, ATTORNEY AND CLIENT, EXECUTORS AND ADMINISTRATORS, and other specific topics

Particular classes of persons, rights and liabilities in respect of trusts, see INFANTS and other specific topics

Perpetuities, restrictions on creation of, or of trusts for accumulation, see PERPETUITIES

Security for debt, conveyances in trust as—

General creditors, see CREDITORS' REMEDIES

Particular debts, see CHATTEL MORTGAGES, MORTGAGES AND DEEDS OF TRUST, SECURED TRANSACTIONS

Trade combinations, pools, etc., see ANTI-TRUST AND TRADE REGULATION, CONTRACTS, CONSPIRACY

Usufruct, see PROPERTY

Validity and construction of particular—

Deeds, see DEEDS

Marriage settlements, see MARRIAGE AND COHABITATION

Testamentary provisions, see WILLS

I. CREATION, EXISTENCE, AND VALIDITY, ¶1-111.

- (A) EXPRESS TRUSTS, ¶1-61.5.
- (B) RESULTING TRUSTS, ¶62-90.
- (C) CONSTRUCTIVE TRUSTS, ¶91-111.

II. CONSTRUCTION AND OPERATION, ¶112-154.

- (A) IN GENERAL, ¶112-128.
- (B) ESTATE OR INTEREST OF TRUSTEE AND OF CESTUI QUE TRUST, ¶129-154.

III. APPOINTMENT, QUALIFICATION, AND TENURE OF TRUSTEE, ¶155-170.

IV. MANAGEMENT AND DISPOSAL OF TRUST PROPERTY, ¶171-269.

V. EXECUTION OF TRUST BY TRUSTEE OR BY COURT, ¶270-288.

VI. ACCOUNTING AND COMPENSATION OF TRUSTEE, ¶289-333.

VII. ESTABLISHMENT AND ENFORCEMENT OF TRUST, ¶334-377.

- (A) RIGHTS OF CESTUI QUE TRUST AS AGAINST TRUSTEE, ¶334-348.
 - (B) RIGHT TO FOLLOW TRUST PROPERTY OR PROCEEDS THEREOF, ¶349-358.
 - (C) ACTIONS, ¶359-377.
- VIII. LIABILITIES ON TRUSTEES' BONDS, ¶378-387.**

390. TRUSTS

I. CREATION, EXISTENCE, AND VALIDITY.

(A) EXPRESS TRUSTS.

1. Nature and essentials of trusts.
2. What law governs.
3. Constitutional and statutory provisions.
4. — In general.
5. — Abolition of uses and trusts other than those expressly authorized.
6. — Adoption or re-enactment of statute of uses.
7. — Construction and operation of provisions authorizing trusts in general.
8. Persons who may create trusts.
9. Persons for whose benefit trusts may be created.
10. Property which may be subject of trusts.
11. Purposes for which trusts may be created.
 - (1). In general.
 - (2). To sell and convey real estate.
 - (3). Collection and distribution of rents and profits.
12. Validity of spendthrift trusts.
13. Consideration.
14. Trusts taking effect in future.
15. Limitation of use upon use, or of trust upon trust.
16. Invalid trusts valid as powers.
17. Validity of oral trusts, and requirement of statute of frauds.
 - (1). In general.
 - (2). Trusts in personalty.
 - (3). Trusts in lands in general.
 - (4). Agreement to hold in trust.
 - (5). Agreement to reconvey.
 - (6). Agreement as to lands to be purchased.
 - (7). Trusts in proceeds of sales.
 - (8). Execution or part performance of trust.
19. Written instruments creating or declaring trusts.
 - 19.1. — In general.
20. — Nature and requisites in general.
21. — Form and contents.
 - (1). In general.
 - (2). Certainty.
22. — Execution and delivery.
23. — Recording and registration.
24. Sufficiency of language used.

I. CREATION, EXISTENCE, AND VALIDITY.(Cont'd)

25. — In general.
 - (1). In general.
 - (2). Recitals as to consideration for conveyance.
 - (3). Reservations, conditions, and other limitations in conveyances.
26. — Grants of authority involving trust.
27. — Provisions for maintenance.
28. — Spendthrift trusts.
29. — Precatory words.
30. Covenants to stand seised to uses, and deeds operating as such covenants.
- 30.5. Transactions creating or operating as trusts in general.
 - (1). In general.
 - (2). Transactions between persons in confidential relations.
31. Transfer of legal title.
33. Delivery of money or other personal property.
34. Deposit of money in bank.
 - (1). In general.
 - (2). Acts and declarations showing intent of depositor.
 - (3). Retention or delivery of passbook or certificate.
 - (4). Subsequent withdrawals.
35. Agreements to hold or convey to use of another.
 - (1). In general.
 - (2). Agreement to hold for joint use or benefit of holder of legal title and others.
 - (3). Agreements between testator and devisees or legatees.
 - (4). Agreement to reconvey.
36. Devise or bequest to use of another.
37. Life insurance payable to another.
- 37.5. Necessity and sufficiency of delivery of property.
38. Acceptance by trustee.
39. Acceptance by cestui que trust.
40. Evidence to establish trust.
- 40.1. — In general.
41. — Presumptions and burden of proof.
42. — Admissibility in general.
43. — Parol evidence.
 - (1). In general.

390. TRUSTS

I. CREATION, EXISTENCE, AND VALIDITY.(Cont'd)

- (2). Contradicting, varying, or adding to instrument creating trust.
- (3). Intention of parties to absolute conveyance, transfer, or devise.
- 44. — Weight and sufficiency.
 - (1). In general.
 - (2). Evidence to charge grantee or assignee as trustee.
 - (3). Degree of proof.
- 45. Validity.
- 46. — In general.
- 47. — Mistake.
- 48. — Fraud.
- 49. — Undue influence.
- 50. — Duress.
- 51. — Illegality of provisions.
- 52. Partial invalidity.
- 53. Estoppel or waiver as to defects or objections.
- 54. Ratification of defective or invalid trust.
- 55. Right to contest validity of trust.
- 56. Cancellation for invalidity.
- 57. Reformation.
- 58. Modification.
- 59. Revocation.
 - (1). In general.
 - (2). Conditions or reservations in instrument creating trust.
 - (3). Inclusion or omission of reservation as affecting validity of trust.
 - (4). Mode of revocation.
- 60. Duration.
- 61. Termination.
 - (.5). In general.
 - (1). By decree of court.
 - (2). By death of parties.
 - (3). By acts, agreements, and conveyances.
 - (4). Effect.
 - (5). Revival.
- 61.5. Effect of invalidity.

(B) RESULTING TRUSTS.

- 62. Nature of resulting trust.
- 62.5. What law governs.
- 63. Constitutional and statutory provisions.
- 63.5. Effect of statute of frauds and statutes prohibiting parol trusts.

I. CREATION, EXISTENCE, AND VALIDITY.(Cont'd)

- 63.9. Creation and existence in general.
- 64. Failure or defect in creation, operation or execution of express trust.
- 65. — In general.
- 66. — Ineffective declaration of trust, conveyance, or devise.
- 67. — Residue or surplus not included in trust or not required for execution thereof.
- 68. — Failure, lapse, or other extinguishment of trust.
- 69. Voluntary conveyance to grantee not entitled to take beneficial interest.
- 70. Intention of grantee to hold for or convey to another.
- 71. Payment of consideration for conveyance to another.
- 72. — In general.
- 73. — Property subject of trust.
- 74. — Nature of sale and conveyance.
- 75. — Nature of consideration.
- 76. — Source of consideration.
- 77. — Time of payment.
- 78. — Mode and sufficiency of payment.
- 79. — Part payment.
- 80. — Purpose of payment in general.
- 81. — Relationship between parties.
 - (1). In general.
 - (2). Husband and wife.
 - (3). Payment with joint funds of husband and wife.
 - (4). Parent and child.
- 82. — Payment as gift or advancement.
- 83. Payment of purchase money on purchase of land.
- 84. Payment of fiduciary funds for conveyance to person holding fiduciary relation.
- 85. Evidence to establish trust.
- 85.1. — In general.
- 86. — Presumptions and burden of proof.
- 87. — Admissibility in general.
- 88. — Parol evidence.
- 89. — Weight and sufficiency.
 - (1). In general.
 - (2). Payment or ownership of money.
 - (3). Purpose of payment.

390. TRUSTS

I. CREATION, EXISTENCE, AND VALIDITY.(Cont'd)

(4). Agreements, admissions, and declarations.

(5). Degree of proof required.

90. Questions for jury.

(C) CONSTRUCTIVE TRUSTS.

91. Nature of constructive trust.

92. Constitutional and statutory provisions.

92.5. Statute of frauds and statutes prohibiting parol trusts.

93. Mistake in conveyance.

94. Invalidity or rescission of conveyance or transfer.

94.5. Fraud in general.

95. Fraud or other wrong in acquisition of property in general.

96. Breach of oral agreement to hold in trust or reconvey land voluntarily conveyed.

97. Fraud or undue influence in procuring or preventing devise or bequest.

98. Breach of oral agreement as to lands to be purchased.

99. — In general.

100. — Judicial sale.

101. Breach of contract of agency or employment.

102. Breach of duty by person in fiduciary relation in general.

(1). In general.

(2). Executors, administrators, and guardians.

103. Contracts and transactions between persons in confidential relations.

(1). In general.

(2). Family relation in general.

(3). Husband and wife.

(4). Attorney and client.

(5). Partners.

104. Wrongful assumption of control of property.

105. Wrongful disposition of property.

106. Evidence to establish trust.

106.1. — In general.

107. — Presumptions and burden of proof.

108. — Admissibility in general.

109. — Parol evidence.

110. — Weight and sufficiency.

111. Questions for jury.

II. CONSTRUCTION AND OPERATION.

(A) IN GENERAL.

112. Application of general rules of construction.

113. What law governs.

114. Trusts executed or executory.

117. Construing instruments together.

118. Extrinsic circumstances.

119. Evidence to aid construction.

121. Parties.

121.1. — In general.

122. — Settlers or creators of trusts.

123. — Trustees.

124. — Cestuis que trust.

125. Property included.

126. Capital and income.

127. Purposes of trust.

128. Priority between declarations of trust.

(B) ESTATE OR INTEREST OF TRUSTEE AND OF CESTUI QUE TRUST.

129. Nature of estate in trust.

130. Statutory provisions.

130.5. Omission of words of inheritance.

131. Operation of statute of uses to execute trusts in general.

132. Legal estate under invalid use or trust vesting in person entitled to use or beneficial interest.

133. Extent of estate or interest of trustee.

134. — In general.

135. — Active trusts.

136. — Passive trusts.

136.5. — Rights and remedies of creditors of trustee.

137. Estoppel of trustee as to title of creator of trust.

138. Adverse possession of trustee.

139. Extent of estate or interest of cestui que trust.

139.1. — In general.

140. — Express trusts in general.

(1). In general.

(2). Conditions and limitations in general.

(3). Estate or interest of remaindermen.

141. — Spendthrift trusts.

142. — Resulting trusts.

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II. CONSTRUCTION AND OPERATION.(Cont'd)

- 143. — Constructive trusts.
- 144. Estoppel of cestui que trust as to title of trustee.
- 145. Mutual rights and liabilities of cestuis que trust.
- 146. Transfer of estate or interest of cestui que trust.
- 146.1. — In general.
- 147. — Express trusts in general.
 - (1). In general.
 - (2). Mortgage or pledge.
- 148. — Restraints on anticipation of income.
- 149. — Implied trusts.
- 150. Rights and remedies of creditors of cestui que trust.
- 151. — In general.
- 151.1. — Trust property in general.
- 151.2. — Rents, profits, accumulations and surplus.
- 151.3. — Proceedings.
- 152. — Spendthrift trusts.
- 153. Interest remaining in settlor or creator of trust.
- 154. Merger of estates.

III. APPOINTMENT, QUALIFICATION, AND TENURE OF TRUSTEE.

- 155. Designation by creator of trust.
- 156. Executors as trustees.
- 157. Appointment by other trustees or by cestui que trust.
- 158. Jurisdiction of courts.
- 159. Qualifications of trustee.
- 160. Judicial appointment.
 - (1). In general.
 - (2). Want of trustee.
 - (3). Proceedings.
- 161. Bond.
- 162. Resignation and discharge.
- 163. Disqualification.
- 164. Removal.
- 164.1. — In general.
- 165. — Power to remove.
- 166. — Grounds.
 - (1). In general.
 - (2). Mismanagement or misconduct in execution of trust.
- 167. — Proceedings.

III. APPOINTMENT, QUALIFICATION, AND TENURE OF TRUSTEE.(Cont'd)

- 168. Death and survivorship.
- 169. Appointment and succession of new trustee.
 - (1). In general.
 - (2). Provisions of instrument creating trust.
 - (3). Proceedings.
- 170. Intermeddling with trust estate and trustees de son tort.

IV. MANAGEMENT AND DISPOSAL OF TRUST PROPERTY.

- 171. Authority of trustee in general.
- 172. Limitations of authority imposed in creation of trust.
- 173. Representation of cestui que trust by trustee.
- 176. Delegation of powers and duties.
- 177. Supervision and discretionary powers.
- 178. Instructions of court.
- 179. Diligence and good faith of trustee.
- 181. Collection of outstanding property.
 - (1). In general.
 - (2). Release or compromise of demands.
- 182. Possession, use, and care of property.
- 183. Rents and profits.
- 184. Repairs and improvements.
- 186. Leaseholds.
- 187. Charges on and claims against property.
- 188. Sale and conveyance.
- 188.1. — In general.
- 189. — Authority and duty in general.
- 190. — Statutory provisions.
- 191. — Power of sale in instrument creating trust.
 - (1). In general.
 - (2). Provisions implying power of sale.
 - (3). Exercise of power in general.
- 192. — Consent of cestui que trust.
- 193. — Compelling sale under power.
- 193.5. — Authority of court and grounds for ordering sale.
- 194. — Proceedings for order of court for sale.
- 195. — Time, manner, and conduct of sale.
- 196. — Terms and conditions of sale.

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**IV. MANAGEMENT AND DISPOSAL
OF TRUST PROPERTY.(Cont'd)**

- 197. — Validity of sale.
- 198. — Purchase by trustee.
- 199. — Purchase by cestui que trust.
- 200. — Conveyance and delivery of property.
 - (5). In general.
 - (1). Conveyance.
 - (2). Confirmation by court.
- 201. — Payment or recovery of purchase money.
- 202. — Application of proceeds.
- 203. — Rights and title of purchasers.
- 204. — Setting aside.
- 205. Lease.
- 206. Mortgage or pledge.
 - (5). In general.
 - (1). Power to mortgage or pledge.
 - (2). Mortgage under order of court.
 - (3). Purpose of mortgage.
 - (4). Misapplication of proceeds.
 - (5). Property included.
 - (6). Form, requisites, and validity.
 - (7). Consent of cestui que trust, and estoppel to make objection.
- 207. Indorsement and transfer of bills, notes, and securities.
- 208. Assignment and transfer of rights of action.
- 209. Contracts.
- 210. — In general.
- 211. — Services.
- 212. — Borrowing money.
- 213. — Bills and notes.
- 215. Property acquired by trustee.
- 216. Investments.
- 217.1. — In general.
- 217.2. — Place of investment.
- 217.3. — Nature of investment or security in general.
 - (1). In general.
 - (2). Directions of settlor.
 - (3). Effect of statutes.
 - (4). Non-legal securities.
 - (5). Prudent man rule.
 - (6). Income and diversification.
 - (7). Particular investments.

**IV. MANAGEMENT AND DISPOSAL
OF TRUST PROPERTY.(Cont'd)**

- (8). Participations and common trust funds.
- (9). Retention or reinvestment.
- 217.4. — Corporate stocks and bonds.
- 217.5. — Incumbered property.
- 218. — Loss or depreciation.
 - (1). In general.
 - (2). Consent of cestui que trust, and estoppel to charge trustee with loss.
- 219. Interest on funds of estate.
 - (1). In general.
 - (2). Rate, time, and computation.
- 220. Dedication of property to public use.
- 221. Deposits.
- 222. Loans.
- 223. Gifts.
- 224. Expenditures.
- 225. — In general.
- 226. — Taxes and assessments.
- 227. — Counsel fees and costs.
- 228. Submission to arbitration.
- 229. Confession of judgment.
- 230. Estoppel.
- 231. Individual interest in transactions.
 - (1). In general.
 - (2). Purchase of property in general.
 - (3). Purchase of adverse title or claim.
- 232. Fraud.
- 233. Waste, conversion, or embezzlement by trustee.
- 234. Loss of property.
- 235. Torts.
- 236. Reimbursement and indemnity to trustee.
- 237. Ratification of unauthorized acts.
- 238. Cotrustees.
- 238.1. — In general.
- 239. — Joint or several authority.
- 240. — Joint or several liability.
- 241. — Acting trustee.
- 242. — Surviving trustee.
- 243. Successive trustees.
- 244. Representatives of deceased trustees.
- 245. Actions between, by, or against trustees.
- 245.1. — In general.

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IV. MANAGEMENT AND DISPOSAL OF TRUST PROPERTY.(Cont'd)

- 246. — Capacity of trustee to sue and be sued in general.
- 247. — Right of action by beneficiary.
- 248. — Rights of action and defenses between cotrustees.
- 249. — Rights of action by trustees.
- 250. — Rights of action against trustees.
- 251. — Defenses against trustees in general.
- 252. — Defenses by trustees in general.
- 253. — Set-off and counterclaim.
- 254. — Jurisdiction.
- 256. — Time to sue and limitations.
See also LIMITATION OF ACTIONS.
- 257. — Parties.
- 258. — Joinder or intervention in actions by others.
- 259. — Termination of trust or removal or death of trustee pending action.
- 260. — Process and appearance.
- 261. — Pleading.
- 262. — Evidence.
- 263. — Trial.
- 265. — Judgment and relief.
- 266. — Execution and enforcement of judgment.
- 267. — Appeal and error.
- 268. — Costs.
- 269. — Conduct of action or defense.

V. EXECUTION OF TRUST BY TRUSTEE OR BY COURT.

- 270. Duty of trustee in general.
- 271. Rights and powers of trustee.
- 271.5. Instructions of court.
- 272. Distinction between capital and income.
- 272.1. — In general.
- 272.2. — Profits on sale of property.
- 272.3. — Dividends, rights, and additional stock.
 - (1). In general.
 - (2). Earnings or capital as source; wasting assets corporations.
 - (3). Time earned, declared, or paid; undeclared earnings.
 - (4). Extraordinary dividends.
 - (5). Subscription rights and other non-cash distributions in general.

V. EXECUTION OF TRUST BY TRUSTEE OR BY COURT.(Cont'd)

- (6). Stock splits and stock dividends.
- (6.1). — In general.
- (7). — Earnings or capital as source, and time of accrual of earnings.
- (8). — Capitalization of surplus.
- (9). — Shares or securities of other corporations.
- (10). — Directions of settlor.
- (11). — Merger, reorganization, divestiture, or liquidation, distributions pursuant to.
- 273. Right to income and accumulations.
- 273.5. Right to principal or legal estate.
- 274. Adjustment and apportionment of expenses or losses.
 - (1). In general.
 - (2). Taxes, incumbrances, insurance, and repairs.
 - (3). Compensation of trustees and attorneys and cost of administration.
 - (4). Premiums and commissions on investments.
- 275. Reservation of funds to meet contingencies.
- 276. Expenditure of principal.
- 277. Advances by trustee.
- 278. Sufficiency of execution of trust in general.
- 279. Execution of powers in trust.
- 280. Payment or distribution of income or accumulations in general.
- 281. Payment of annuities.
- 282. Payment or distribution of proceeds of trust property.
- 283. Transactions between trustee and cestui que trust in general.
 - (1). In general.
 - (2). Purchase of trust property by trustee.
- 284. Conveyance of trust property to cestui que trust.
- 285. Unauthorized advancements.
- 286. Reconveyance of trust property to settlor or creator of trust.
- 287. Execution of trust devolving on court.

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V. EXECUTION OF TRUST BY TRUSTEE OR BY COURT.(Cont'd)

288. Setting aside unauthorized acts and agreements.

VI. ACCOUNTING AND COMPENSATION OF TRUSTEE.

- 289. Duty to account in general.
- 291. Who entitled to require accounting.
- 292. Who liable to account in general.
- 293. Cotrustees.
- 294. Successors and representatives.
- 295. Property to be included.
- 296. Release from liability.
- 297. Nature and form of proceeding for accounting.
- 298. Jurisdiction of courts.
- 299. Proceedings for intermediate or partial accounting.
- 299.1. — In general.
- 300. — By trustee.
- 301. — Compelling accounting.
- 302. Proceedings for final settlement.
- 302.1. — In general.
- 303. — By trustee.
- 304. — Compelling accounting.
- 305. Actions for accounting.
- 306. Order or interlocutory judgment or decree to account.
- 307. Charges.
- 308. — In general.
- 309. — Interest.
- 310. Credits.
- 311. — In general.
- 312. — Expenses and disbursements.
- 313. — Counsel fees and costs.
- 314. Compensation.
- 315. — In general.
 - (1). In general.
 - (2). Amount.
 - (3). Allowance and recovery.
- 316. — Commissions.
 - (1). In general.
 - (2). Amount and computation.
- 317. — Extra allowances.
- 318. — Cotrustees.
- 319. — Successive trustees.
- 320. — Lien.
- 321. — Forfeiture or deprivation.

VI. ACCOUNTING AND COMPENSATION OF TRUSTEE.(Cont'd)

- 322. Form and requisites of account.
- 323. Vouchers and proof of payment.
- 324. Objections and exceptions to account.
- 325. Evidence.
- 326. Hearing or reference.
- 327. Judgment or decree.
- 328. Opening or vacating.
- 329. Review.
- 330. Costs and expenses.
- 331. Operation and effect of accounting.
- 332. Private accounting and settlement.
- 333. Actions to open or set aside settlement.

VII. ESTABLISHMENT AND ENFORCEMENT OF TRUST.

(A) RIGHTS OF CESTUI QUE TRUST AS AGAINST TRUSTEE.

- 334. Establishment of existence of trust.
- 336. Enforcing performance of duties of trust.
- 337. Setting aside wrongful acts of trustee.
- 338. Reimbursement of advances and expenditures made by cestui que trust.
- 339. Personal liability of trustee for violation of trust.
- 340. Lien on property of trustee.
- 341. Insolvency of trustee.
- 342. Priorities of cestui que trust and trustee's creditors.
- 343. Estoppel or waiver.
- 344. Persons entitled to enforce trust.
- 344.1. — In general.
- 345. — Express trusts.
- 346. — Resulting trusts.
- 347. — Constructive trusts.
- 348. Persons against whom trust may be enforced.

(B) RIGHT TO FOLLOW TRUST PROPERTY OR PROCEEDS THEREOF.

- 349. Nature and grounds of right.
- 350. Election of remedy.
- 351. Trust property or funds mingled with property or funds of trustee.
- 352. — In general.
- 353. — Effect of insolvency of trustee.
- 354. Proceeds of trust property in hands of trustee.

391. TURNPIKES AND TOLL ROADS

VII. ESTABLISHMENT AND ENFORCEMENT OF TRUST.(Cont'd)

- 355. Trust property transferred to third persons.
- 356. — In general.
 - (1). In general.
 - (2). Payment, loan, or deposit of funds.
- 357. — Purchasers in good faith.
 - (1). In general.
 - (2). Notice.
 - (3). Consideration.
- 358. Identification of property.
 - (1). In general.
 - (2). Effect of payments or withdrawals from commingled funds.

(C) ACTIONS.

- 359. Nature and form of remedy.
 - (1). In general.
 - (2). Equity jurisdiction in general.
 - (3). Remedy at law.
- 360. Grounds of action.
- 361. Conditions precedent.
- 362. Defenses.
- 363. Jurisdiction.
- 364. Venue.
- 365. Time to sue, limitations, and laches.
 - (1). In general.

See also LIMITATION OF ACTIONS.

 - (2). Laches in general.
 - (3). Repudiation or violation of trust, and knowledge of beneficiary as affecting laches.
 - (4). Resulting trusts.
 - (5). Constructive trusts.
- 366. Parties.
 - (.5). In general.
 - (1). Necessary and proper parties in general.
 - (2). Complainants.
 - (3). Defendants.
 - (4). Intervention.
- 367. Process and appearance.
- 368. Injunction.
- 369. Receiver or deposit in court.
- 370. Discovery.
- 371. Pleading.
 - (.5). In general.
 - (1). Bill, complaint, or petition in general.

VII. ESTABLISHMENT AND ENFORCEMENT OF TRUST.(Cont'd)

- (2). Allegations as to creation and existence of trust.
- (3). Allegations as to violation of trust.
- (4). Allegations as to conditions precedent.
- (5). Answer.
- (6). Cross-bill.
- (6.5). Demurrer.
- (7). Amendments.
- (8). Issues, proof, and variance.
- 372. Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency.
- 373. Trial or hearing.
- 374. Scope and extent of relief.
- 375. Judgment or decree and enforcement thereof.
 - (1). In general.
 - (2). Enforcement.
- 376. Appcal.
- 377. Costs.

VIII. LIABILITIES ON TRUSTEES' BONDS.

- 378. Nature and extent in general.
- 379. Property covered.
- 380. Functions and acts covered.
- 382. Discharge of sureties.
- 383. Breach or fulfillment of conditions.
- 384. Necessity of accounting and default by principal.
- 385. Conclusiveness of adjudication against principal.
- 386. Summary remedies.
- 387. Actions.

391. TURNPIKES AND TOLL ROADS

SUBJECTS INCLUDED

Construction, maintenance, regulation and use of roads for passage over which tolls are taken

391. TURNPIKES AND TOLL ROADS

Organization, franchises and powers of companies formed to construct and maintain such roads

Establishment thereof by public authorities

Rights, duties and liabilities of such companies or authorities, as to the public and as to individuals, in respect of management and operation of their roads

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Automobiles, injuries in operation or use of toll roads or resulting from defects or obstructions therein, see AUTOMOBILES

Corporations, matters applicable to in general, see CORPORATIONS AND BUSINESS ORGANIZATIONS

Eminent domain, exercise of power, see EMINENT DOMAIN

Highways in general, see HIGHWAYS

Municipalities' powers to aid toll roads and liabilities incurred by them for that purpose, see MUNICIPAL CORPORATIONS

Taxation of toll roads, see TAXATION

Toll bridges, see BRIDGES

I. ESTABLISHMENT, CONSTRUCTION, AND MAINTENANCE, ¶1-32.

II. REGULATION AND USE FOR TRAVEL, ¶33-51.

I. ESTABLISHMENT, CONSTRUCTION, AND MAINTENANCE.

1. Right to establish and maintain in general.
2. Character of road as highway.
3. Constitutional and statutory provisions.
4. Establishment by public authorities.
5. Turnpike and toll-road companies.
- 5.1. — In general.
6. — Incorporation and organization.
7. — Capital, stock, and stockholders.
8. — Officers and agents.
9. — Franchises, privileges, and powers.
10. — Public aid.
11. Amendment or revocation of charters.
12. Location.
13. — In general.
14. — Use of highway or other road.
15. Right of way and other interests in land.
16. Rights of abutting owners.

I. ESTABLISHMENT, CONSTRUCTION, AND MAINTENANCE. (Cont'd)

17. Construction.
18. Maintenance and repair.
19. — In general.
20. — Supervision and enforcement by public authorities.
21. Injuries from construction or maintenance.
22. Penalties for failure to construct or maintain.
23. Sale and transfer of road.
24. Mortgages.
25. Acquisition of road by public authorities.
26. Injuries to road or other property.
- 26.5. Actions by or against companies in general.
27. Insolvency and receivers.
28. Reorganization and consolidation of companies.
29. Abandonment of road or franchise.
30. Duration and termination of charter or franchise.
31. Forfeiture of franchise and dissolution.
32. Offenses incident to construction and maintenance.

II. REGULATION AND USE FOR TRAVEL.

33. Power to control and regulate.
34. Statutory and municipal regulations.
35. Licenses and taxes.
36. Mode and purposes of use.
37. Tolls.
- 37.1. — In general.
38. — Right to exact.
39. — Liability to pay.
40. — Exemptions.
 - (1). In general.
 - (2). Contracts for exemption.
41. — Rate and amount.
42. — Tollgates and tollhouses.
43. — Collection and enforcement.
44. Liabilities for injuries.
 - 44.1. — In general.
45. — Nature and grounds in general.
46. — Defects or obstructions causing injury.
47. — Notice of defects or obstructions.
48. — Contributory negligence.

392T. UNEMPLOYMENT COMPENSATION

II. REGULATION AND USE FOR TRAVEL.(Cont'd)

- 49. Actions for injuries.
- 50. Penalties for violations of regulations.
- 51. Offenses incident to travel.

392. UNDERTAKINGS

SUBJECTS INCLUDED

- Promises in writing, not under seal, given as security for performance of some particular act required in a judicial proceeding
- Nature, requisites, validity, construction, operation and effect of such instruments in general
- Breach of undertakings
- Proceedings to enforce liabilities of sureties

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Bonds under seal, see BONDS
- Particular proceedings, undertakings incident to, see ARREST, BAIL, CREDITORS' REMEDIES, and other specific topics
- Recognizances entered into of record, see RECOGNIZANCES

- 1. Nature and essentials in general.
- 2. Requisites and validity.
- 3. Construction and operation.
- 6. Extent of liability.
- 8. Actions.

392T. UNEMPLOYMENT COMPENSATION

SUBJECTS INCLUDED

- Covered employment relationships
- Persons entitled to compensation

- Proceedings for determination of entitlement to compensation and review thereof
- Payment, amount and period of compensation

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Disability insurance, see INSURANCE
- Employee pension and benefit plans, see LABOR AND EMPLOYMENT
- Employment relationships in general, rights and duties incident thereto, and disputes involving, see LABOR AND EMPLOYMENT
- Federal and state disability assistance and benefits, see SOCIAL SECURITY, PUBLIC ASSISTANCE
- Federal and state old age assistance and benefits, see SOCIAL SECURITY, PUBLIC ASSISTANCE
- Government employment, rights and duties incident thereto, and disputes involving, see COUNTIES, MUNICIPAL CORPORATIONS, PUBLIC EMPLOYMENT, STATES, TOWNS, UNITED STATES, and other specific topics
- Taxation of employers for unemployment compensation, see INTERNAL REVENUE, TAXATION
- Workers' compensation, see WORKERS' COMPENSATION

- I. IN GENERAL, ¶1-14.
- II. EMPLOYMENTS, EMPLOYEES, AND EMPLOYERS COVERED, ¶15-39.
- III. RIGHT TO COMPENSATION IN GENERAL, ¶40-59.
- IV. CAUSE OF UNEMPLOYMENT, ¶60-179.
 - (A) IN GENERAL, ¶60-64.
 - (B) FAULT OR MISCONDUCT, ¶65-99.
 - (C) VOLUNTARY ABANDONMENT OF EMPLOYMENT, ¶100-149.
 - (D) LABOR OR TRADE DISPUTES, ¶150-179.
- V. DUTY TO SEEK WORK, ¶180-189.
- VI. DUTY TO ACCEPT WORK, ¶190-229.
- VII. ADMINISTRATIVE OFFICERS AND EMPLOYEES, ¶230-249.
- VIII. PROCEEDINGS, ¶250-449.
 - (A) IN GENERAL, ¶250-269.
 - (B) HEARING, ¶270-309.

392T. UNEMPLOYMENT COMPENSATION

VIII. PROCEEDINGS—Cont'd

- (C) ADMINISTRATIVE REVIEW,
 § 310-339.
- (D) COSTS AND FEES, § 340-349.
- (E) MISCONDUCT IN COMPENSA-
 TION PROCEEDINGS,
 § 350-359.
- (F) EVIDENCE IN GENERAL,
 § 360-399.
- (G) WEIGHT AND SUFFICIENCY OF
 EVIDENCE, § 400-449.
- IX. JUDICIAL REVIEW, § 450-519.
- X. ACTIONS, § 520-529.
- XI. INJUNCTIONS, § 530-539.
- XII. COMPROMISE AND SETTLEMENT,
 § 540-549.
- XIII. WAIVER AND ESTOPPEL,
 § 550-559.
- XIV. FUNDS, § 560-569.
- XV. AMOUNT OF COMPENSATION,
 § 570-579.
- XVI. PERIOD OF COMPENSATION,
 § 580-589.
- XVII. PAYMENT OF BENEFITS,
 § 590-594.
- XVIII. ASSIGNABILITY OR TRANSFER
 OF RIGHTS, § 595-599.
- XIX. RECOVERY BACK OR RECOUP-
 MENT OF BENEFITS, § 600-609.
- XX. OFFENSES AND PENALTIES, § 610.

I. IN GENERAL.

- 1. In general.
- 2. Purpose of unemployment compensation
 in general.
- 3. Constitutional and statutory provisions.
- 4. — In general.
- 5. — Purpose and intent of provisions.
- 6. — Construction of statutes.
 - (1). In general.
 - (2). Liberal or strict construction.
 - (3). — In general.
 - (4). — Disqualification in general.
 - (5). — Fault or misconduct.
 - (6). — Voluntary abandonment of
 employment.
- 7. — Validity.
- 8. — Retroactive application.
- 9. What law governs.
- 10. Preemption.

II. EMPLOYMENTS, EMPLOYEES, AND EMPLOYERS COVERED.

- 15. In general.

II. EMPLOYMENTS, EMPLOYEES, AND EMPLOYERS COVERED.(Cont'd)

- 16. Existence of employment relationship;
 services.
- 17. Compensation.
- 18. Place of employment.
- 19. Number of employees.
- 20. Simultaneous and successive employers.
- 21. Particular employments, employees, and
 employers.
- 22. — In general.
- 23. — Agriculture.
- 24. — Charitable, religious, and nonprofit
 organizations.
- 25. — Family relation between employee
 and employer.
- 26. — Governmental employment.
- 27. — Schools and colleges.
- 28. — Independent contractors and their
 employees.
- 29. — Independent trade or occupation.
- 30. — Salespersons and brokers.
- 31. — Seasonal employment.

III. RIGHT TO COMPENSATION IN GENERAL.

- 40. In general.
- 41. Aliens.
- 42. Other income.
- 43. — In general.
- 44. — Vacation pay.
- 45. — Dismissal, severance, or termination
 payments.
 Excludes income during labor disputes, see § 171.
- 46. — Retirement benefits.
- 47. — Workers' compensation benefits.
- 48. Existence of unemployment.
- 49. — In general.
- 50. — Part-time employment.
- 51. — Self-employment; activity for or in-
 terest in business organization.
- 52. — Vacations, holidays, and leaves of
 absence.
- 53. — Seasonal employees.
- 54. — School or college employees.

IV. CAUSE OF UNEMPLOYMENT.

(A) IN GENERAL.

- 60. In general.

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IV. CAUSE OF UNEMPLOYMENT.(Cont'd)

- 61. Discharge in general.
- 62. Retirement.

(B) FAULT OR MISCONDUCT.

- 65. In general.
- 66. Particular conduct or circumstances in general.
- 67. Violation of rules, disobedience, or insubordination in general.
- 68. — In general.
- 69. — Knowledge of rule or policy.
- 70. — Reasonableness of rule, policy, or request.
- 71. Refusal or nonperformance of work assignments.
- 72. Off-duty misconduct in general.
- 73. Inability to obtain licensure or certification.
- 74. Inefficiency, incompetency, or unsatisfactory performance in general.
- 75. Negligence in general.
- 76. Sleeping during work hours.
- 77. Absence or tardiness.
- 78. — In general.
- 79. — Transportation difficulties.
- 80. — Illness or chemical dependency.
- 81. — Failure to notify employer of absence or tardiness.
- 82. Dishonest or criminal acts.
- 83. — In general.
- 84. — Conviction of crime in general.
- 85. — Imprisonment.
- 86. — Employment applications.
- 87. Violence at workplace.
- 88. Alcohol or drug use or impairment.
- 89. — In general.
- 90. — Off-duty use or impairment.
- 91. — On-duty use or impairment.
- 92. — Failure of test.
- 93. Improper language; threats.
- 94. Sexual misconduct.
- 95. Garnishments.

(C) VOLUNTARY ABANDONMENT OF EMPLOYMENT.

- 100. In general.
- 101. Good cause in general.
- 102. Provoking discharge.
- 103. Provoking resignation.

IV. CAUSE OF UNEMPLOYMENT.(Cont'd)

- 104. Personal reasons in general.
- 105. Moving to other areas in general.
- 106. Family obligations in general.
- 107. Marriage, and change of domicile caused thereby.
- 108. Change in location of spouse's employment.
- 109. Child care issues.
- 110. Care of ill relatives.
- 111. Illness or physical disability of employee.
- 112. Pregnancy.
- 113. Pursuit of education.
- 114. Pursuit of other employment.
- 115. Suspension or reduction of operations by employer.
- 116. — In general.
- 117. — Layoffs in general.
- 118. — Early retirement.
- 119. Compensation and payment thereof.
- 120. Employee benefits.
- 121. Working conditions or assignments.
- 122. — In general.
- 123. — Reassignment, or change of duties or workload, in general.
- 124. — Suitability of work in general.
- 125. — Criticism by or problems with supervisor.
- 126. — Discipline of employees.
- 127. — Problems with co-workers.
- 128. — Harassment.
- 129. — Dangerousness of work; safety issues.
- 130. Working hours.
- 131. — In general.
- 132. — Reduction or increase in number of hours worked in general.
- 133. — Change in full-time or part-time status.
- 134. — Change in time of employment, shift, or days worked.
- 135. — Refusal of employer to accommodate employee's request for change.
- 136. Transportation issues.
- 137. — In general.
- 138. — Length of commute in general.
- 139. — Employer's relocation of place of employment.

392T. UNEMPLOYMENT COMPENSATION

(D) LABOR OR TRADE DISPUTES.

- 150. In general.
- 151. Strikes and walk-outs in general.
- 152. Lock-outs in general.
- 153. Merits or motives of dispute.
- 154. Existence and duration of dispute.
- 155. Suspension or termination of employment by employer.
- 156. — In general.
- 157. — Employees not involved in labor dispute in general.
- 158. — Employees involved in labor dispute.
 - (1). In general.
 - (2). Replacement of employees.
- 159. — Shortage of work or materials.
- 160. Participation or interest in dispute.
- 161. — In general.
- 162. — Membership or non-membership in union.
- 163. Failure or refusal to cross picket lines.
- 164. — In general.
- 165. — Fear or violence.
- 166. Grade or class of employees affected.
- 167. Establishment or place where dispute exists.
- 168. — In general.
- 169. — Separate establishments.
- 170. Disputes not involving claimant's employer.
- 171. Subsequent employment and other income.
- 172. — In general.
- 173. — Strike benefits.
- 174. Resumption of operations; re-employment.

V. DUTY TO SEEK WORK.

- 180. In general.
- 181. Efforts to obtain employment.
- 182. — In general.
- 183. — Registration requirements.
- 184. — Reporting requirements.
- 185. — Referral requirements.
- 186. — Interview requirements.

VI. DUTY TO ACCEPT WORK.

- 190. In general.
- 191. Cause for refusal in general.

VI. DUTY TO ACCEPT WORK.(Cont'd)

- 192. Availability in general.
- 193. — In general.
- 194. — Availability of work.
- 195. — Availability of claimant.
- 196. Suitability in general.
- 197. Capability in general.
- 198. Length of unemployment, effect of.
- 199. Personal considerations in general.
- 200. Conditions and restrictions demanded by claimant, in general.
- 201. Knowledge, skill, or experience.
- 202. — In general.
- 203. — Usual work or occupation.
- 204. Labor disputes, work available due to.
- 205. Union membership considerations.
- 206. Physical condition and health.
- 207. — In general.
- 208. — Pregnancy.
- 209. — Age.
- 210. Retirees.
- 211. Students.
- 212. Temporary work.
- 213. — In general.
- 214. — Anticipated return to former employment.
- 215. Working hours.
- 216. — In general.
- 217. — Part-time work.
- 218. Transportation difficulties.
- 219. Location of work.
- 220. Compensation.
- 221. Offers from former employer.
- 222. — In general.
- 223. — Suitability.

VII. ADMINISTRATIVE OFFICERS AND EMPLOYEES.

- 230. In general.
- 231. Boards, commissions, and offices, in general.
- 232. Officers and employees in general.
- 233. Powers in general.
- 234. Duties in general.
- 235. Jurisdiction in general.
- 236. Rules and regulations in general.
- 237. — In general.
- 238. — Adoption.
- 239. — Construction.

392T. UNEMPLOYMENT COMPENSATION

VII. ADMINISTRATIVE OFFICERS AND EMPLOYEES.(Cont'd)

- 240. — Validity.
- 241. — Retroactive operation.

VIII. PROCEEDINGS.

(A) IN GENERAL.

- 250. In general.
- 251. Rules of procedure in general.
- 252. Claims and applications.
- 253. — In general.
- 254. — Time for filing.
- 255. Investigations and interviews.
- 256. Ex parte proceedings.
- 257. Parties.
- 258. Witnesses and subpoenas.
- 259. Determinations of other agencies, effect of.
- 260. — In general.
- 261. — Civil service proceedings.
- 262. — Workers' compensation proceedings.
- 263. — Tax proceedings.
- 264. Alternative dispute resolution decisions, effect of.

(B) HEARING.

Includes appeals from decisions in ex parte proceedings.

- 270. In general.
- 271. Right to hearing.
- 272. Notice.
- 273. Proceedings to obtain hearing.
- 274. — In general.
- 275. — Timeliness of request.
- 276. Conduct of hearing.
- 277. — In general.
- 278. — Reception of evidence in general.
- 279. — Bias of ALJ.
- 280. Witnesses.
- 281. — In general.
- 282. — Subpoenas.
- 283. — Examination.
- 284. Constitutionality of hearing.
- 285. Questions of fact; credibility determinations.
- 286. — In general.
- 287. — Employments, employees, and employers covered.
- 288. — Right to compensation in general.

VIII. PROCEEDINGS.(Cont'd)

- 289. — Cause of unemployment in general.
- 290. — Fault or misconduct.
- 291. — Voluntary abandonment of employment.
- 292. — Labor or trade disputes.
- 293. — Duty to seek work.
- 294. — Duty to accept work.
- 295. Findings and conclusions.
- 296. — In general.
- 297. — Necessity of findings.
- 298. — Specificity of findings.
- 299. Determination and order.
- 300. — In general.
- 301. — Conclusiveness and effect.
- 302. — Reopening or reconsideration.
- 303. — Modification.
- 304. Rehearing.

(C) ADMINISTRATIVE REVIEW.

- 310. In general.
- 311. Proceedings for review.
- 312. — In general.
- 313. — Time for proceedings.
- 314. Hearing; trial de novo.
- 315. — In general.
- 316. — New evidence.
- 317. Reference.
- 318. Scope of review.
- 319. — In general.
- 320. — De novo review.
- 321. — Substantial or competent evidence.
- 322. Findings and conclusions.
- 323. Determination and order.
- 324. — In general.
- 325. — Reopening or reconsideration.
- 326. — Modification.
- 327. — Remand or remittal.
- 328. Interstate appeals.

(D) COSTS AND FEES.

- 340. In general.

(E) MISCONDUCT IN COMPENSATION PROCEEDINGS.

- 350. In general.
- 351. False statements.

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(F) EVIDENCE IN GENERAL.

- 360. In general.
- 361. Official or administrative notice.
- 362. Presumptions.
- 363. — In general.
- 364. — Employment relationship, existence of.
- 365. — Right to compensation, in general.
- 366. — Cause of unemployment in general.
- 367. — Fault or misconduct.
- 368. — Voluntary abandonment of employment.
- 369. — Labor or trade disputes.
- 370. — Duty to accept work.
- 371. — Matters related to compensation proceedings.
- 372. Burden of proof.
- 373. — In general.
- 374. — Employment relationship, existence of.
- 375. — Right to compensation, in general.
- 376. — Cause of unemployment in general.
- 377. — Fault or misconduct.
 - (1). In general.
 - (2). Violation of work rules, disobedience, or insubordination.
 - (3). Absence or tardiness.
- 378. — Voluntary abandonment of employment.
 - (1). In general.
 - (2). Good cause.
- 379. — Labor or trade disputes.
- 380. — Duty to accept work.
- 381. Admissibility.
- 382. — In general.
- 383. — Relevancy in general.
- 384. — Hearsay.
- 385. — Declarations and admissions.
- 386. — Documentary evidence.
- 387. — Affidavits.

(G) WEIGHT AND SUFFICIENCY OF EVIDENCE.

- 400. In general.
- 401. Hearsay in general.
- 402. Employments, employees, and employers covered.
- 403. — In general.

VIII. PROCEEDINGS.(Cont'd)

- 404. — Independent contractors and their employees.
- 405. Right to compensation in general.
- 406. — In general.
- 407. — Other income.
- 408. — Fact of unemployment.
 - (1). In general.
 - (2). Self-employment; activity for or interest in business organization.
 - (3). School or college employees.
- 409. Cause of unemployment in general.
- 410. — In general.
- 411. — Discharge in general.
- 412. Fault or misconduct.
- 413. — In general.
- 414. — Violation of rules, disobedience, or insubordination in general.
- 415. — Refusal or nonperformance of work assignments.
- 416. — Inefficiency, incompetency, or unsatisfactory performance in general.
- 417. — Negligence in general.
- 418. — Absence or tardiness.
- 419. — Dishonest or criminal acts.
- 420. — Violence in the workplace.
- 421. — Alcohol or drug use or impairment.
- 422. — Improper language; threats.
- 423. — Sexual misconduct.
- 424. Voluntary abandonment of employment.
- 425. — In general.
- 426. — Good cause in general.
- 427. — Moving to other areas in general.
- 428. — Illness or physical disability of employee.
- 429. — Pursuit of other employment.
- 430. — Suspension or reduction of operations by employer.
- 431. — Compensation and benefits.
- 432. — Working conditions or assignments.
- 433. — Working hours.
- 434. — Transportation issues.
- 435. Labor or trade disputes.
- 436. Duty to seek work.
- 437. Duty to accept work.
- 438. — In general.

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VIII. PROCEEDINGS.(Cont'd)

- 439. — Availability.
- 440. — Suitability.
- 441. — Capability.
- 442. — Physical condition and health.
- 443. Matters relating to compensation proceedings.
- 444. — In general.
- 445. — Misconduct.

IX. JUDICIAL REVIEW.

Includes appeals from judicial decisions.

- 450. In general.
- 451. Applicability of administrative procedure acts.
- 452. Decisions reviewable.
- 453. — In general.
- 454. — Finality.
- 455. Persons entitled to seek review; parties.
- 456. Raising contentions below; preservation of claim; exhaustion.
- 457. Proceedings for review in general.
- 458. Petitions for review in general.
- 459. Briefs.
- 460. Time for proceedings.
- 461. — In general.
- 462. — Tolling of time period.
- 463. — Extension of deadline; excuse for noncompliance.
- 464. Effect of appeal or petition; supersedeas.
- 465. Record; transcript.
- 466. Dismissal of appeal.
- 467. Withdrawal of appeal.
- 468. Abandonment of appeal.
- 469. Scope of review.
- 470. — In general.
- 471. — Limitations on scope of review, in general.
- 472. — Violation of constitutional rights, in general.
- 473. — Reasonableness or rationality, in general.
- 474. — Deference to administrative determination, in general.
- 475. — Review in light most favorable to agency.
- 476. — Discretion of agency, and abuse thereof.
- 477. — Substitution of court's judgment for that of agency, in general.
- 478. — Presumptions and inferences, in general.
- 479. — Additional evidence, consideration of.
- 480. — De novo review in general.
- 481. — Questions of fact in general.
- 482. — Reasonableness of decision in light of findings.
- 483. — Conclusiveness of fact findings.
- 484. — Reweighing evidence.
- 485. — Evidence supporting findings, in general.
- 486. — Substantial evidence; competent evidence.
- 487. — Conflicting evidence.
- 488. — Weight of evidence.
- 489. — Credibility determinations.
- 490. — Decision against party with burden of proof.
- 491. — Questions of law; errors of law.
 - (1). In general.
 - (2). De novo review.
 - (3). Clear error.
- 492. — Mixed questions of law and fact.
- 493. — Particular cases and issues.
 - (1). In general.
 - (2). Employments, employees, and employers covered.
 - (3). Right to compensation in general.
 - (4). Cause of unemployment in general.
 - (5). Fault or misconduct.
 - (6). Voluntary abandonment of employment.
 - (7). Labor or trade disputes.
 - (8). Duty to seek work.
 - (9). Duty to accept work.
 - (10). Matters relating to compensation proceedings.
- 494. Determination in general.
- 495. Harmless error.
- 496. Reversible error.
- 497. Remand.
- 498. Rehearing, reopening or reconsideration.
- 499. Costs and fees.
- 500. Further review.

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X. ACTIONS.

520. In general.

XI. INJUNCTIONS.

530. In general.

XII. COMPROMISE AND SETTLEMENT.

540. In general.

XIII. WAIVER AND ESTOPPEL.

550. In general.

XIV. FUNDS.

Excludes employer accounts and experience ratings, see TAXATION §3291.

560. In general.

XV. AMOUNT OF COMPENSATION.

570. In general.

571. Base for computation.

572. — In general.

573. — Wages.

574. — Vacation and holiday pay.

575. Reduction by reason of employment or other income.

576. — In general.

577. — Pension or retirement benefits.

578. — Vacation and holiday pay.

579. Reduction due to misconduct.

XVI. PERIOD OF COMPENSATION.

580. In general.

581. Extended benefits.

582. Disqualification periods.

583. — In general.

584. — Waiting periods in general.

585. — Misconduct.

XVII. PAYMENT OF BENEFITS.

590. In general.

XVIII. ASSIGNABILITY OR TRANSFER OF RIGHTS.

595. In general.

XIX. RECOVERY BACK OR RECOUPMENT OF BENEFITS.

600. In general.

601. Actions and proceedings.

602. Review.

XX. OFFENSES AND PENALTIES.

610. In general.

393. UNITED STATES

SUBJECTS INCLUDED

The political entity formed by adoption of the Constitution of the United States

Nature of the Union

Rights, powers, property, and functions of the national government in general, of Congress, and of the President and the executive departments and inferior officers in general

Contracts, torts, and other liabilities of and claims against the United States

Immunity of the United States, and waiver thereof

Court of Federal Claims (formerly Claims Court and Court of Claims), and proceedings therein

Actions against the United States

Liabilities to and claims by the United States, and actions thereon

Making or presentation of false claims against the United States

Employees, officers, and other agents of the United States

Corporations, special instrumentalities, and similar entities controlled by the United States

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Attorney General, see ATTORNEY GENERAL

Citizens of the United States and of the several states and their rights in general, see ALIENS, IMMIGRATION, AND CITIZENSHIP, CIVIL RIGHTS, CONSTITUTIONAL LAW

Commerce, interstate and foreign, regulation of, see COMMERCE

Court officers, see COURTS II(B)

393. UNITED STATES

Courts of the United States, see FEDERAL COURTS and specific topics dealing with particular subjects of jurisdiction

Distribution of powers among legislative, judicial, and executive departments of government, see CONSTITUTIONAL LAW XX

District of Columbia, powers over, see DISTRICT OF COLUMBIA

Election of federal officers, see ELECTION LAW

Eminent domain, exercise of power of, see EMINENT DOMAIN

Foreign countries, relations with, see AMBASSADORS AND CONSULS, INTERNATIONAL LAW, TREATIES, WAR AND NATIONAL EMERGENCY

Indians, relations with, see INDIANS

Insurrection and rebellion, see INSURRECTION AND SEDITION, STATES

Judges, see JUDGES, UNITED STATES MAGISTRATE JUDGES

Marshals, see UNITED STATES MARSHALS

Military and naval forces, see ARMED SERVICES, MILITARY JUSTICE

Money and currency, see CURRENCY REGULATION

Officers in general, and civil service requirements affecting federal employees, see PUBLIC EMPLOYMENT

Particular occupations and activities, federal regulation of, see AGRICULTURE, ANTI-TRUST AND TRADE REGULATION, CONTROLLED SUBSTANCES, ELECTRICITY, HEALTH, TELECOMMUNICATIONS, and other specific topics

Postal service and regulation of postal communications, see POSTAL SERVICE

Public lands, see MINES AND MINERALS, PUBLIC LANDS, WOODS AND FORESTS

States, relation to United States and to each other, see STATES

Taxation and revenue, see CUSTOMS DUTIES, INTERNAL REVENUE

Territories, powers over, see TERRITORIES

War powers and exercise thereof, see WAR AND NATIONAL EMERGENCY

I. STATUS, POWERS, AND FUNCTIONS IN GENERAL, ¶201-400.

I. STATUS, POWERS, AND FUNCTIONS IN GENERAL—Cont'd

(A) IN GENERAL, ¶201-210.

(B) LEGISLATIVE BRANCH; CONGRESS, ¶211-240.

(C) EXECUTIVE BRANCH; PRESIDENT, ¶241-260.

(D) NATIONAL SYMBOLS, EMBLEMS, AND INSIGNIA; FLAG, ¶261-270.

(E) AUTHORITY OVER PLACES WITHIN STATES; FEDERAL ENCLAVES, ¶271-280.

(F) PROPERTY, ¶281-310.

(G) FISCAL MATTERS, ¶311-340.

(H) HOUSING AND URBAN DEVELOPMENT, ¶341-360.

(I) RURAL AID AND DEVELOPMENT, ¶361-370.

(J) SMALL BUSINESS ADMINISTRATION, ¶371-400.

II. LIABILITIES OF AND CLAIMS AGAINST UNITED STATES, ¶401-1200.

(A) IN GENERAL, ¶401-420.

(B) IMMUNITY IN GENERAL, ¶421-470.

(C) CLAIM PROCEEDINGS IN GENERAL, ¶471-490.

(D) ACTIONS IN GENERAL, ¶491-540.

(E) CONTRACTS AND CONTRACT CLAIMS, ¶541-860.

1. IN GENERAL, ¶541-560.

2. BIDDING AND BID PROTESTS, ¶561-610.

3. FORMATION OF CONTRACT, ¶611-640.

4. CONTRACTOR BONDS, ¶641-680.

5. CONSTRUCTION AND OPERATION, ¶681-730.

6. ASSIGNMENT OF CONTRACT; SUBCONTRACT, ¶731-740.

7. MODIFICATION, ¶741-750.

8. RESCISSION, TERMINATION, OR ABANDONMENT, ¶751-760.

9. PERFORMANCE OR BREACH, ¶761-800.

10. RIGHTS AND REMEDIES OF CONTRACTORS, ¶801-830.

11. RIGHTS AND REMEDIES OF THIRD PARTIES, ¶831-850.

12. RIGHTS AND REMEDIES OF GOVERNMENT, ¶851-860.

(F) TORTS AND TORT CLAIMS, ¶861-980.

1. IN GENERAL, ¶861-870.

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II. LIABILITIES OF AND CLAIMS AGAINST UNITED STATES—Cont'd (F) TORTS AND TORT CLAIMS

—Cont'd

2. LIABILITY AND IMMUNITY IN GENERAL, ⑈871–880.

3. PARTICULAR LIMITATIONS ON AND EXCEPTIONS TO LIABILITY, ⑈881–900.

4. PARTICULAR CLAIMS OR SITUATIONS, LIABILITY OF UNITED STATES, ⑈901–920.

5. DISCRETIONARY ACTS OR FUNCTIONS, ⑈921–940.

6. ARMED SERVICES AND COMBATANT ACTIVITIES; FERES DOCTRINE, ⑈941–950.

7. REMEDIES AND PROCEDURE, ⑈951–980.

(G) ASSIGNMENT OF CLAIMS, ⑈981–990.

(H) COURT OF FEDERAL CLAIMS (FORMERLY CLAIMS COURT AND COURT OF CLAIMS), ⑈991–1070.

(I) INTEREST, ⑈1071–1080.

(J) COSTS AND FEES, ⑈1081–1200.

1. IN GENERAL, ⑈1081–1100.

2. GROUNDS, ⑈1101–1140.

3. EXPENSES RECOVERABLE AND AMOUNT THEREOF, ⑈1141–1170.

4. PROCEEDINGS, ⑈1171–1190.

5. COSTS AND FEES INCURRED ON APPEAL, ⑈1191–1200.

III. LIABILITIES TO AND CLAIMS BY UNITED STATES, ⑈1201–1250.

IV. FALSE CLAIMS, ⑈1251–1300.

V. EMPLOYEES, OFFICERS, AND AGENTS, ⑈1301–1520.

(A) IN GENERAL, ⑈1301–1360.

(B) COMPENSATION, ⑈1361–1380.

(C) PENSIONS AND BENEFITS, ⑈1381–1400.

(D) LIABILITIES, ⑈1401–1500.

1. IN GENERAL, ⑈1401–1450.

2. CONSTITUTIONAL VIOLATIONS; BIVENS CLAIMS, ⑈1451–1500.

(E) CRIMINAL RESPONSIBILITY, ⑈1501–1510.

(F) CONGRESSIONAL EMPLOYEES, OFFICERS, AND AGENTS, ⑈1511–1520.

VI. CORPORATIONS, SPECIAL INSTRUMENTALITIES, AND SIMILAR ENTITIES CONTROLLED BY UNITED STATES, ⑈1521–1560.

I. STATUS, POWERS, AND FUNCTIONS IN GENERAL.

(A) IN GENERAL.

201. In general; nature.

202. Territorial extent, boundaries, and jurisdiction.

203. Governmental powers in general.

(B) LEGISLATIVE BRANCH; CONGRESS.

211. In general; nature.

212. Members of Congress; Senators and Representatives.

213. — In general.

214. — Eligibility and qualification.

215. — Term of office.

216. — Apportionment of Representatives; reapportionment and redistricting.

(1). In general.

(2). Power and duty to apportion.

(3). Method of apportionment in general.

(4). Equality of representation and discrimination; Voting Rights Act.

(5). Judicial review and enforcement.

217. — Regulation of election of members.

(1). In general.

(2). Relation to state law; preemption.

218. — Vacancies; special elections.

219. — Determination as to election and qualifications of members.

(1). In general; election contests.

(2). Discipline and expulsion of members.

220. — Rights, privileges, duties, and liabilities of members.

(1). In general.

(2). Compensation.

(3). Judicial intervention and immunity in general.

(4). Speech or debate.

(5). Criminal responsibility.

221. Legislative authority, powers, and functions.

222. — In general.

223. — Necessary and Proper Clause.

224. Proceedings in Congress.

393. UNITED STATES

**I. STATUS, POWERS, AND FUNCTIONS
IN GENERAL.**(Cont'd)

- 225. — In general.
- 226. — Sessions and meetings; quorum.
- 227. — Orders and resolutions.
- 228. Congressional investigations, commissions, and committees.
- 229. — In general.
- 230. — Power of inquiry in general.
- 231. — Particular subjects or inquiries.
 - (1). In general.
 - (2). Conduct of members; elections and lobbying.
 - (3). Executive and judicial branches; impeachment.
 - (4). Sedition, disloyalty, and espionage.
- 232. — Offenses by witnesses.
 - (1). In general.
 - (2). Defenses; grounds for refusal to testify.
 - (3). Prosecution and trial.
 - (4). — In general.
 - (5). — Evidence.
 - (6). — Questions of law or fact.
 - (7). Sentence and punishment.
 - (8). Civil liability.
- 233. Contempt of Congress.

(C) EXECUTIVE BRANCH; PRESIDENT.

- 241. In general; nature.
- 242. Presidential eligibility and qualification.
- 243. Presidential term of office; vacancy.
- 244. Presidential electors.
- 245. Rights, privileges, duties, and liabilities of President.
- 246. — In general.
- 247. — Compensation.
- 248. — Judicial intervention; immunity.
- 249. Executive authority, powers, and functions.
- 250. — In general.
- 251. — Take Care Clause.
- 252. — Executive orders and presidential proclamations in general.
- 253. — Authority for particular actions.
- 254. — Review of presidential actions.
- 255. Creation and abolition of public offices.
- 256. — In general.
- 257. — Reorganization; privatization.

**I. STATUS, POWERS, AND FUNCTIONS
IN GENERAL.**(Cont'd)

- 258. — Advisory committees.
- 259. Executive departments and department heads.

**(D) NATIONAL SYMBOLS, EMBLEMS,
AND INSIGNIA; FLAG.**

- 261. In general.
- 262. Desecration and misuse of flag.
- 263. — In general.
- 264. — Validity of statutes.
- 265. — Prosecution and trial.
 - (1). In general.
 - (2). Evidence.
- 266. — Sentence and punishment.
- 267. — Civil liability.

**(E) AUTHORITY OVER PLACES WITHIN
STATES; FEDERAL ENCLAVES.**

- 271. In general.
- 272. State consent; federal acceptance.
- 273. Applicability and enforcement of state law.
- 274. Reservation of federal jurisdiction upon admission of state to Union.
- 275. Relinquishment of federal jurisdiction; retrocession or recession.

(F) PROPERTY.

- 281. In general.
- 282. Acquisition and possession.
- 283. — In general.
- 284. — Purposes for which property may be acquired or held.
- 285. — Title, conveyances, and contracts.
- 286. — Leases.
- 287. — Easements.
- 288. — Gifts.
- 289. — Options.
- 290. Construction, improvement, protection, and repair.
- 291. — In general.
- 292. — Site selection.
- 293. — Border control.
- 294. Control, regulation, and use.
- 295. — In general.
- 296. — Buildings and offices.
- 297. — Outdoor places in general.
- 298. — Parks and recreation areas.

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**I. STATUS, POWERS, AND FUNCTIONS
IN GENERAL.(Cont'd)**

- 299. — Monuments.
- 300. — Concession contracts.
- 301. — Blind vendors.
- 302. Disposition.
- 303. — In general.
- 304. — Sale or exchange.
 - (1). In general.
 - (2). Real property in general.
 - (3). Personal property in general.
 - (4). Surplus, stockpiled, and military property.
 - (5). Vessels and aircraft.
 - (6). Quality and condition of property sold.
- 305. — Leases.
- 306. — Abandonment or loss.
- 307. Administrative agencies and proceedings.

(G) FISCAL MATTERS.

- 311. In general.
- 312. Spending.
- 313. — In general.
- 314. — Recipients, terms, and conditions in general.
 - (1). In general.
 - (2). State and local governments and agencies.
 - (3). Private entities and individuals.
- 315. — Particular subjects and programs.
 - (1). In general.
 - (2). Public works and economic development.
 - (3). Financial markets.
 - (4). Energy.
 - (5). Health.
 - (6). Education and research.
 - (7). Law enforcement and prisons.
 - (8). Disasters and emergencies.
 - (9). Foreign aid and international development.
 - (10). Volunteer services.
- 316. — Review of federal agency action.
 - (1). In general.
 - (2). Decisions reviewable; finality.
 - (3). Exhaustion of remedies.

**I. STATUS, POWERS, AND FUNCTIONS
IN GENERAL.(Cont'd)**

- (4). Persons entitled to seek review or assert arguments; parties; standing.
- (5). Time for proceedings.
- (6). Proceedings on review; record; preservation.
- (7). Scope, standard, and extent of review.
- (8). Determination and disposition.
- 317. Appropriations; general and special funds.
- 318. — In general; necessity.
- 319. — Purposes, uses, and restrictions in general.
- 320. — Particular subjects and programs.
- 321. Budgets, deficits, and surpluses.
- 322. Borrowing and debt in general.
- 323. Collection, custody, and payment of funds.
- 324. Bills and notes.
- 325. — In general.
- 326. — Lost, stolen, and forged checks.
- 327. — Treasury bills and notes.
- 328. Bonds.
- 329. — In general.
- 330. — Ownership and transfer.
- 331. — Maturity and payment.
- 332. — Savings and war bonds.
 - (1). In general.
 - (2). Ownership and transfer.
 - (3). Maturity and payment.

(H) HOUSING AND URBAN DEVELOPMENT.

- 341. In general.
- 342. Contracts in general.
- 343. Loans, mortgages, and guarantees.
- 344. — In general.
- 345. — Federal Housing Administration (FHA).
- 346. Transportation.
- 347. Relocation assistance.
- 348. Homeless assistance.
- 349. Review of federal agency action.
- 350. — In general.
- 351. — Decisions reviewable; finality.
- 352. — Exhaustion of remedies.
- 353. — Persons entitled to seek review or assert arguments; parties; standing.

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I. STATUS, POWERS, AND FUNCTIONS IN GENERAL.(Cont'd)

- 354. — Time for proceedings.
- 355. — Proceedings on review; record.
- 356. — Scope, standard, and extent of review.
- 357. — Determination and disposition.

(I) RURAL AID AND DEVELOPMENT.

- 361. In general.
- 362. Rural housing and home financing.
- 363. Rural electrification and utilities.

(J) SMALL BUSINESS ADMINISTRATION.

- 371. In general.
- 372. Administrative agencies and proceedings in general.
- 373. Participation in program; size.
- 374. Loans, mortgages, and guarantees.

II. LIABILITIES OF AND CLAIMS AGAINST UNITED STATES.

(A) IN GENERAL.

- 401. In general.
- 402. Statutory provisions.
- 403. Particular liabilities and claims.
- 404. — In general.
- 405. — Use or infringement of copyrights.
- 406. — Use or infringement of patents.
 - (1). In general; remedy of patent owner.
 - (2). Liability of government.
 - (3). Liability of government contractor.
 - (4). Persons entitled to sue.
 - (5). Time to sue and limitations.
 - (6). Evidence.
 - (7). Hearing and determination.
 - (8). Damages and profits.
 - (9). Royalties.
- 407. — Claims arising under revenue laws.
- 408. — Services or losses in war in general.
- 409. — French spoliation claims.
- 410. — Civil war claims.
 - (1). In general.
 - (2). Claims for proceeds of captured or abandoned property.
- 411. — Claims under treaties in general.
- 412. — International claims settlement.

II. LIABILITIES OF AND CLAIMS AGAINST UNITED STATES.(Cont'd)

- 413. — Claims under Indian treaties or statutes for relief of Indians.
 - (1). In general.
 - (2). Enforcement of statutory trust or fiduciary duty.
 - (3). Treaty enforcement.
 - (4). Indian Claims Commission.
- 414. — Indian depredation claims.
- 415. — Claims by subjects of foreign governments.
- 416. — Illegal exactions.
- 417. — Statutory compensation funds.
 - (1). In general.
 - (2). Redress for internment.
 - (3). Victims of terrorist attack.
- 418. — Unjust conviction or imprisonment.
- 419. — Unfunded mandates.

(B) IMMUNITY IN GENERAL.

- 421. In general.
- 422. Waiver of immunity; consent to suit.
- 423. — In general.
- 424. — Necessity of waiver or consent.
- 425. — Power to waive immunity or consent to suit.
- 426. — Modification or withdrawal of waiver or consent.
- 427. — Mode and sufficiency of waiver or consent.
- 428. — Construction of waiver or consent in general.
- 429. — Conditions and restrictions.
- 430. — Effect of waiver or consent.
- 431. What are suits against United States or its officers or agents barred by immunity.
- 432. — In general.
- 433. — Judgment sought against public treasury.
- 434. — Officer sued in official capacity.
- 435. — Unauthorized or unconstitutional actions of officer.
- 436. — Derivative immunity; contractors.
- 437. Particular departments, officers, or agencies, suits against.
- 438. — In general.
- 439. — Agriculture Department.

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**II. LIABILITIES OF AND CLAIMS AGAINST
UNITED STATES.(Cont'd)**

- 440. — Alien property custodian.
- 441. — Commerce Department; maritime agencies.
- 442. — Congress.
- 443. — Defense Department.
- 444. — Education Department.
- 445. — Energy Department.
- 446. — Environmental Protection Agency.
- 447. — Financial instrumentalities in general.
- 448. — Health and Human Services Department.
- 449. — Homeland Security Department.
- 450. — Housing and Urban Development Department.
- 451. — Interior Department and land office.
- 452. — Justice Department; Attorney General.
- 453. — Labor Department.
- 454. — Postal Service.
- 455. — State Department.
- 456. — Transportation Department.
- 457. — Treasury Department; Internal Revenue Service.
- 458. — Veterans Affairs Department.
- 459. Particular claims and actions.
- 460. — In general.
- 461. — Admiralty and public vessels.
 - (1). In general.
 - (2). Vessels involved.
 - (3). Nature of cause of action in general.
 - (4). Seamen, causes involving.
- 462. — Aliens and immigration.
- 463. — Declaratory judgment.
- 464. — Injunction.
- 465. — Insurance.
- 466. — Internal revenue and taxation.
 - (1). In general.
 - (2). Tax liens.
 - (3). Refund claims.
 - (4). Wrongful levy or collection of taxes.
- 467. — Liens.
 - (1). In general.
 - (2). Mortgage liens and foreclosure.

**II. LIABILITIES OF AND CLAIMS AGAINST
UNITED STATES.(Cont'd)**

- 468. — Property, actions relating to in general.
 - (1). In general.
 - (2). Attachment and garnishment.
 - (3). Forfeiture actions.
 - (4). Indian trust lands or allotments.
 - (5). Quiet title actions.
 - (6). Condemnation; takings claims.
- 469. — Water rights.

(C) CLAIM PROCEEDINGS IN GENERAL.

- 471. In general.
- 472. Auditing boards or officers; authority.
- 473. Presentation of claims.
- 474. — In general.
- 475. — Notice of claim.
- 476. — Time.
- 477. Audit and allowance or disallowance.
- 478. Compromise and settlement.
- 479. Effect of allowance or disallowance.
- 480. Effect of recognition.
- 481. Payment.
- 482. Disposition of proceeds.
- 483. — In general.
- 484. — Indian claims.

(D) ACTIONS IN GENERAL.

- 491. In general.
- 492. Rights of action against United States or federal officers.
- 493. — In general.
- 494. — Statutory authority.
- 495. Standing.
- 496. — In general.
- 497. — Taxpayer standing.
- 498. Exhaustion of remedies.
- 499. Defenses in general.
- 500. Set-off and counterclaim by United States.
- 501. — In general.
- 502. — Nature of claim in general.
- 503. — Independent transactions in general.
- 504. — Tax claims.
- 505. Jurisdiction.
- 506. — In general.

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II. LIABILITIES OF AND CLAIMS AGAINST UNITED STATES.(Cont'd)

- 507. — Claims to property or for property taken or damaged.
- 508. — Compensation for services.
- 509. — Recovery of money paid or deposited.
- 510. — Intellectual property; patents and copyrights.
- 511. — Postal Service, claims concerning.
- 512. — Amount in controversy.
- 513. Venue.
- 514. Time to sue, limitations, and laches.
- 515. Parties.
- 516. — In general.
- 517. — Particular officers or agencies or commissions.
- 518. — Particular cases, United States as proper or indispensable party.
- 519. Process.
- 520. — In general.
- 521. — Method of service; who must be served.
- 522. — Time of service.
- 523. Appearance and representation by attorney.
- 524. Pleading.
- 525. Evidence.
- 526. — In general.
- 527. — Presumptions and burden of proof.
- 528. — Admissibility.
- 529. — Weight and sufficiency.
- 530. Damages.
- 531. — In general.
- 532. — Elements and measure of damages.
- 533. — Punitive damages.
- 534. Trial.
- 535. Judgment.
- 536. Execution and enforcement of judgment.

(E) CONTRACTS AND CONTRACT CLAIMS.

1. IN GENERAL.

- 541. In general.
- 542. Statutory provisions.
- 543. What law governs.
- 544. Power, authority, and capacity to contract.
- 545. — In general.

II. LIABILITIES OF AND CLAIMS AGAINST UNITED STATES.(Cont'd)

- 546. — Particular bodies and agencies.
- 547. — Employees, officers, and agents.
 - (1). In general.
 - (2). Particular employees, officers, and agents.
- 548. Individual interest of contracting officer or body; conflict of interest.
- 549. Power to bind successors.
- 550. Appropriation or provision for payment as prerequisite of contract.
- 551. Term or duration of contract.
- 552. Immunity.
- 553. — In general.
- 554. — Sovereign acts affecting liability.
- 555. — Equitable remedies; specific performance.
- 556. Actions in general.

2. BIDDING AND BID PROTESTS.

- 561. In general.
- 562. Statutory provisions.
- 563. Necessity for submission to competition in general.
- 564. Power to let contract without submission to competition or to dispense with requirements.
- 565. Request for bids.
- 566. — In general; advertising.
- 567. — Specifications.
- 568. Bidders.
- 569. — In general.
- 570. — Preferences and set-asides.
- 571. — Conditions and restrictions on bidders.
- 572. — Debarment and suspension of bidders.
- 573. Bids.
- 574. — In general.
- 575. — Form and requisites; responsiveness.
- 576. — Subbids.
- 577. — Time for making bid.
- 578. — Amendment, correction, or withdrawal.
- 579. — Deposit or other security.
- 580. Acceptance or rejection.
- 581. — In general.
- 582. — Evaluation process.

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**II. LIABILITIES OF AND CLAIMS AGAINST
UNITED STATES.(Cont'd)**

- 583. — Good faith; fairness.
- 584. — Requests for verification; confirmation.
- 585. — Time for opening bids.
- 586. — Time for approving or rejecting bids as proper vel non.
- 587. — Reconsideration.
- 588. Determinative factors in making award.
- 589. — In general.
- 590. — Lowest bid.
- 591. — Reliability and responsibility of bidder.
- 592. — Character of materials and mode of work.
- 593. Award.
- 594. — In general.
- 595. — Time for making award.
- 596. — Operation and effect.
- 597. — Failure to enter into contract; cancellation of solicitation.
- 598. Rights and remedies of disappointed bidders; bid protests.
- 599. — In general.
- 600. — Administrative procedures in general.
- 601. Judicial remedies and review.
- 602. — In general.
- 603. — Conditions precedent; exhaustion of remedies.
- 604. — Parties; standing.
- 605. — Scope of review.
- 606. — Time for proceedings.
- 607. — Evidence.
- 608. — Determination and disposition.
- 609. — Recovery of bid preparation costs.

3. FORMATION OF CONTRACT.

- 611. In general.
- 612. Statutory provisions.
- 613. Express contracts in general.
- 614. Provisions required by law or regulation.
- 615. Formal requisites.
- 616. Necessity of writing.
- 617. Validity and sufficiency of contract.
- 618. — In general.
- 619. — Manner of making contract.
- 620. — Effect of partial invalidity.
- 621. Implied contracts.

**II. LIABILITIES OF AND CLAIMS AGAINST
UNITED STATES.(Cont'd)**

- 622. — In general.
- 623. — Subject matter in general.
- 624. — Appropriation or seizure of property.
- 625. — Construction or manufacture.
- 626. — Inventions and patents.
- 627. — Reimbursement of expenses or losses.
- 628. — Supplies and services.
- 629. — Tenancy and use and occupation.
- 630. Unauthorized or illegal contracts.
- 631. — In general.
- 632. — Ratification.

4. CONTRACTOR BONDS.

- 641. In general.
- 642. Statutory provisions.
- 643. Necessity.
- 644. Power to require.
- 645. Requisites and sufficiency in general.
- 646. Qualification and approval of surety.
- 647. Construction of bond and surety's liability in general.
- 648. Performance of work, guaranty, and repairs.
- 649. Payment for labor and materials in general.
- 650. Claims and persons secured.
- 651. — In general.
- 652. — Labor or services in general.
- 653. — Materials and supplies in general.
- 654. — Use or incorporation in work.
- 655. — Equipment, rental or repair.
- 656. — Loans or advances.
- 657. — Subcontractors.
- 658. — Sub-subcontractors and remote materialmen.
- 659. — Assignees.
- 660. — Extra work, changes, and repairs.
- 661. — Interest, costs, and taxes.
- 662. — Liabilities incurred for damages or to third persons.
- 663. — Supplies or property purchased or rented.
- 664. Actions on bonds.
- 665. — In general.
- 666. — Jurisdiction and venue.
- 667. — Conditions precedent.

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II. LIABILITIES OF AND CLAIMS AGAINST UNITED STATES.(Cont'd)

- 668. — Notice of claim.
 - (1). In general.
 - (2). Service or presentation; timeliness.
 - (3). Form and sufficiency.
 - (4). Waiver and estoppel.
- 669. — Defenses.
 - (1). In general.
 - (2). Estoppel.
- 670. — Time for proceedings.
 - (1). In general.
 - (2). Prematurity; completion and final settlement.
- 671. — Persons entitled to sue.
- 672. — Parties.
- 673. — Persons liable.
- 674. — Pleading.
- 675. — Evidence.
- 676. — Questions of fact or law.
- 677. — Amount of recovery.
- 678. — Costs and fees; interest.
- 679. — Set-offs, deductions, and credits.
- 680. Rights and remedies of sureties.

5. CONSTRUCTION AND OPERATION.

- 681. In general.
- 682. What law governs.
- 683. Application of general rules of construction in general.
- 684. — In general.
- 685. — Construction against government in general.
- 686. — Construction as a whole.
- 687. Deference to agency interpretation.
- 688. Ambiguity in general.
- 689. Patent ambiguity doctrine; duty to inquire before bidding.
- 690. Extrinsic evidence.
- 691. Parties.
- 692. Third-party beneficiaries.
- 693. Subject-matter.
- 694. — In general.
- 695. — Bailments and leases.
- 696. — Construction of buildings and other public works.
- 697. — Goods sold or furnished.
- 698. — Provision of services.

II. LIABILITIES OF AND CLAIMS AGAINST UNITED STATES.(Cont'd)

- 699. — Title to goods or property.
- 700. Place and time of performance.
- 701. Conditions.
- 702. — In general.
- 703. — Indemnity, insurance and liability for damages.
- 704. — Inspection and tests.
- 705. Compensation.
- 706. — In general.
- 707. — Bailments and leases.
- 708. — Construction contracts in general.
- 709. — Cost-plus contracts.
- 710. — Goods sold or furnished in general.
- 711. — From special fund or appropriation.
- 712. Extra costs or expenses in general.
- 713. Changed or unexpected conditions.
- 714. — In general.
- 715. — Increased costs of labor or material.
- 716. Change in plans.
- 717. — In general.
- 718. — Change of materials or quantity.
- 719. — Effect of original contract provisions; what constitutes change.
- 720. — Sufficiency of approval; authority of officer.
- 721. Defective plans and mistakes.
- 722. Representations and specifications misleading contractor.
- 723. Conduct of contractor and third persons; relation to subcontractor.
- 724. Repairs and tests.
- 725. Taxes and interest.
- 726. Liquidated damages.
- 727. Time element; consequences of delay.
- 728. Termination or modification of original contract.
- 729. Preserving right to claim for extras; estoppel.

6. ASSIGNMENT OF CONTRACT; SUBCONTRACT.

- 731. In general.
- 732. Assignability; government approval.
- 733. Filing requirement.

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7. MODIFICATION.

- 741. In general.
- 742. Acts constituting.
- 743. Authority of officer to modify.
- 744. Authority of government entity to modify.
- 745. Material amendments doctrine.
- 746. Consideration.
- 747. Validity of assent.
- 748. Operation and effect.

8. RESCISSION, TERMINATION, OR ABANDONMENT.

- 751. In general.
- 752. Statutory provisions.
- 753. Time of termination; waiver or loss of right.
- 754. Grounds in general.
- 755. Termination for default.
- 756. Notice to cure.
- 757. Operation and effect.

9. PERFORMANCE OR BREACH.

- 761. In general.
- 762. Statutory provisions.
- 763. Contractor's responsibility for nonperformance by subcontractor.
- 764. Implied duties and warranties.
- 765. — In general.
- 766. — Good faith and fair dealing.
- 767. — Cooperation.
- 768. Sufficiency of performance in general.
- 769. Excuses for nonperformance in general.
- 770. Tender of performance.
- 771. Acceptance of performance; approval or certificate of architect or engineer.
- 772. Waiver of rights under contract.
- 773. Reletting contract on failure of performance.
- 774. Completion of contract by government entity or surety in general.
- 775. Delivery.
- 776. Leases to government entity.
- 777. Alternative dispute resolution; arbitration of disputes.
- 778. Decisions of contracting officers on contract disputes.
- 779. — In general.
- 780. — Mistake.
- 781. — Construction of contracts.

II. LIABILITIES OF AND CLAIMS AGAINST UNITED STATES.(Cont'd)

- 782. — Time for filing claim.
- 783. — Failure to make decision.
- 784. — Conclusiveness of decision.
 - (1). In general.
 - (2). Exceptions; fraud or mistake.
- 785. — Review.
 - (1). In general.
 - (2). Necessity of claim.
 - (3). What constitutes a 'claim'.
 - (4). Boards of contract appeals.
 - (5). Jurisdiction of reviewing court.
 - (6). Effect of defective or missing certification.
 - (7). Scope of review.
 - (8). Evidence.
 - (9). Determination and disposition.
- 786. Withholding payments.
- 787. Defective plans or change of plans.
- 788. Replacement of materials under erroneous rulings.
- 789. Alterations and additional or extra work.
- 790. Partial performance.
- 791. Substantial performance.
- 792. Delay of government.
- 793. — In general; what is delay.
- 794. — Liability for damages in general.
- 795. — Overhead costs.
- 796. Delay of contractor.
- 797. Miscellaneous acts or conduct constituting breach.
- 798. Exhaustion of funds.
- 799. Cancellation of contract.
- 800. Wage increases and failure to provide labor.

10. RIGHTS AND REMEDIES OF CONTRACTORS.

- 801. In general.
- 802. Statutory provisions.
- 803. Recovery of deductions.
- 804. Breach of contract by government entity, rights on.
- 805. Relief of contractors in general; misrepresentation and mistake.
- 806. Cancellation or termination of contract in general, rights of contractors.
- 807. Unauthorized or illegal contracts.
- 808. Settlement, release, and waiver in general.

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II. LIABILITIES OF AND CLAIMS AGAINST UNITED STATES.(Cont'd)

- 809. Administration of claims.
- 810. — In general.
- 811. — Presentment of claim.
 - (1). In general; who may file.
 - (2). Service or delivery; timeliness.
 - (3). Excuses for, and relief from, delay or failure.
 - (4). Form and sufficiency.
- 812. — Allowance and settlement.
- 813. — Payment and disposition of proceeds.
- 814. Remedies of contractors.
- 815. — In general.
- 816. — Time for proceedings.
- 817. — Conditions precedent.
- 818. — Defenses.
- 819. — Pleading.
- 820. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Weight and sufficiency.
 - (4). — In general.
 - (5). — Breach of contract.
 - (6). — Cancellation or termination.
 - (7). — Equitable adjustments.
 - (8). — Damages.
- 821. — Damages and amount of recovery.
 - (1). In general.
 - (2). Cancellation or termination.
 - (3). Breach of contract in general.
 - (4). Delay.
 - (5). Loss of profits.
- 822. — Questions of law and fact.
- 823. — Verdicts and findings.

11. RIGHTS AND REMEDIES OF THIRD PARTIES.

- 831. In general.
- 832. Statutory provisions.
- 833. Subcontractors, laborers, and materialmen; liens.
- 834. — In general.
- 835. — Lien or rights as to money due principal contractor.
- 836. — Payments to contractors; trust funds.

II. LIABILITIES OF AND CLAIMS AGAINST UNITED STATES.(Cont'd)

- 837. — Effect of contractor's assignment of contract; priorities.
 - 838. — Miscellaneous persons and claims protected.
 - 839. — Notice or claim; time.
 - 840. — Discharge or extinguishment.
 - 841. — Proceedings for enforcement.
 - 842. Rights and remedies of assignees.
 - 843. Rights and remedies of other third parties.
- 12. RIGHTS AND REMEDIES OF GOVERNMENT.**
- 851. In general.
 - 852. Breach by contractor, rights and remedies on.
 - 853. Liability for cost of completion by another.
 - 854. Proceedings.
 - 855. — In general.
 - 856. — Evidence.
 - 857. — Damages and amount of recovery.
 - 858. Kickbacks.

(F) TORTS AND TORT CLAIMS.

1. IN GENERAL.

- 861. In general.
- 862. Statutory provisions.

2. LIABILITY AND IMMUNITY IN GENERAL.

- 871. In general.
- 872. Waiver of immunity; limitations and exceptions in general.
- 873. Private person's liability as measure.
- 874. — In general.
- 875. — Activities not performed in private sector in general.
- 876. — Particular activities and determinations.
- 877. Acts of employees, officers, and agents; scope of employment.
- 878. — In general.
- 879. — Contractors in general; strict control test.
- 880. — Particular determinations.
 - (1). In general.
 - (2). Contractors.
 - (3). Health care workers.

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3. PARTICULAR LIMITATIONS ON AND EXCEPTIONS TO LIABILITY.

- 881. In general.
- 882. Intentional torts in general.
- 883. Particular torts.
- 884. — In general.
- 885. — Assault and battery.
- 886. — False imprisonment, false arrest, malicious prosecution, and abuse of process.
- 887. — Libel and slander; defamation.
- 888. — Misrepresentation and deceit; fraud.
- 889. — Interference with contract rights.
- 890. Constitutional torts.
- 891. Detention of goods or merchandise.
- 892. Postal matter loss or miscarriage.
- 893. Tax assessment or collection.
- 894. Admiralty and maritime matters.
- 895. Foreign country.
- 896. Governmental operations; quarantine.
- 897. Excepted agencies or entities.

4. PARTICULAR CLAIMS OR SITUATIONS, LIABILITY OF UNITED STATES.

- 901. In general.
- 902. Negligent or wrongful acts in general; strict liability.
- 903. Aviation.
- 904. Employment.
- 905. Law enforcement.
- 906. Maritime.
- 907. Medical care and public health.
- 908. Motor vehicles.
- 909. Premises liability.
- 910. Prisons.
- 911. Property damage.
- 912. Subrogation, contribution, and indemnity against United States.

5. DISCRETIONARY ACTS OR FUNCTIONS.

- 921. In general.
- 922. Element of judgment or choice.
- 923. Considerations of public policy.
- 924. Particular functions or settings.
- 925. — In general.
- 926. — Aviation.
- 927. — Employment.
- 928. — Law enforcement.
- 929. — Maritime.

II. LIABILITIES OF AND CLAIMS AGAINST UNITED STATES.(Cont'd)

- 930. — Medical care and public health.
- 931. — Motor vehicles.
- 932. — Premises liability.
- 933. — Prisons.
- 934. — Property damage.

6. ARMED SERVICES AND COMBATANT ACTIVITIES; FERES DOCTRINE.

- 941. In general.
- 942. Particular claims or situations.
- 943. — In general.
- 944. — Constitutional, civil rights, and discrimination claims.
- 945. — Injuries to civilians and noncombatants.
- 946. — Injuries to detainees and nonuniformed combatants.

7. REMEDIES AND PROCEDURE.

- 951. In general.
- 952. Availability of other remedies.
- 953. — In general; exclusivity.
- 954. — Exhaustion of remedies.
- 955. — Final denial of claim.
- 956. — Effect of other particular remedies or statutory provisions.
- 957. Administration of claims.
- 958. — In general.
- 959. — Presentment of claim.
 - (1). In general; who may file.
 - (2). Service or delivery; timeliness.
 - (3). Excuses for, and relief from, delay or failure.
 - (4). Form and sufficiency.
- 960. — Allowance and settlement.
- 961. — Payment and disposition of proceeds.
- 962. Actions.
- 963. — In general.
- 964. — What law governs.
 - (1). In general; place of injury.
 - (2). Choice of state law.
- 965. — Jurisdiction and venue.
- 966. — Time for proceedings.
- 967. — Parties.
- 968. — Process and pleading.
- 969. — Evidence.
 - (1). In general.

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II. LIABILITIES OF AND CLAIMS AGAINST UNITED STATES.(Cont'd)

- (2). Presumptions and burden of proof.
- (3). Weight and sufficiency of evidence.

- 970. — Damages.
- 971. — Trial, judgment, and relief.

(G) ASSIGNMENT OF CLAIMS.

- 981. In general.
- 982. Statutory provisions.
- 983. Assignments prohibited in general.
- 984. Claims within prohibition.
- 985. Contracts and liens of attorneys or collectors.
- 986. Involuntary assignments; transfers by operation of law in general.
- 987. Validity and effect of assignments.
- 988. Rights of assignee.

(H) COURT OF FEDERAL CLAIMS (FORMERLY CLAIMS COURT AND COURT OF CLAIMS).

- 991. In general; establishment and jurisdiction.
- 992. Claims against United States in general.
- 993. Particular claims, jurisdiction.
- 994. — In general.
- 995. — Administrative Procedure Act.
- 996. — Armed services, cases involving.
- 997. — Carriers' claims.
- 998. — Constitutional, civil rights, and discrimination claims in general.
- 999. — Contract claims.
 - (1). In general.
 - (2). Implied contracts.
- 1000. — Criminal matters.
- 1001. — Declaratory judgment.
- 1002. — Employment claims.
- 1003. — Equitable and nonmonetary relief.
- 1004. — Indians, claims involving.
- 1005. — Insurance.
- 1006. — Internal revenue and taxes.
- 1007. — Patents, use or infringement.
- 1008. — Privacy and freedom of information.
- 1009. — Punitive damages.
- 1010. — Return of money or property.

II. LIABILITIES OF AND CLAIMS AGAINST UNITED STATES.(Cont'd)

- 1011. — Takings claims.
- 1012. — Tort claims.
- 1013. Pendent jurisdiction; set-off and counterclaim.
- 1014. Reference by Congress or executive.
- 1015. — In general.
- 1016. — Equitable relief.
- 1017. Procedure in general.
- 1018. — In general.
- 1019. — As to jurisdiction.
- 1020. — As to pro se litigants.
- 1021. Consolidation, severance, and stay.
- 1022. Dismissal.
- 1023. Exhausting administrative remedies; suspension of proceedings.
- 1024. Time to sue and limitations.
- 1025. — In general; laches.
- 1026. — Particular claims.
- 1027. — Computation; commencement and accrual.
 - (1). In general.
 - (2). Relation back.
 - (3). Tolling.
 - (4). "Accrual suspension" doctrine.
 - (5). Continuing claims, wrongs, and violations.
 - (6). Transferred cases.
- 1028. — Availability and pendency of administrative proceedings.
- 1029. — Waiver of limitations; congressional reference cases.
- 1030. Parties.
- 1031. — In general.
- 1032. — Standing.
- 1033. — Intervention.
- 1034. — Notice to third parties.
- 1035. Class actions.
- 1036. Pleading.
- 1037. — In general.
- 1038. — Construction and presumptions as to pleadings.
- 1039. — Pro se pleadings.
- 1040. — Responsive pleadings; answer and counterclaim.
- 1041. — Amended and supplemental pleadings.
- 1042. — Judgment on pleadings.

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UNITED STATES.(Cont'd)**

- 1043. Discovery, subpoenas, and compelling production of evidence.
- 1044. — In general.
- 1045. — Failure to comply; sanctions.
- 1046. Evidence and affidavits.
- 1047. — In general.
- 1048. — As to jurisdiction.
- 1049. — Expert evidence.
- 1050. Work product.
- 1051. Trial in general.
- 1052. — In general.
- 1053. — Taking proofs; trial de novo.
- 1054. Reference; commissioner or trial judge.
- 1055. — In general.
- 1056. — Effect, and review of determination.
- 1057. Scope of inquiry; findings or report and determination.
- 1058. Judgment and relief.
- 1059. — In general.
- 1060. — Judgment on administrative record.
- 1061. — Summary judgment.
 - (1). In general.
 - (2). Particular cases.
 - (3). Proceedings; evidence.
- 1062. Post-decision relief; further proceedings after interlocutory determination.
- 1063. Indigent litigants; proceedings in forma pauperis.
- 1064. Sanctions.

(I) INTEREST.

- 1071. In general.
- 1072. Sovereign immunity and no interest rule; statutory authorization.
- 1073. Particular cases, interest allowed.
- 1074. Particular cases, interest not allowed.

(J) COSTS AND FEES.

1. IN GENERAL.

- 1081. In general.
- 1082. Necessity of statutory or contractual authorization; American rule in general.

**II. LIABILITIES OF AND CLAIMS AGAINST
UNITED STATES.(Cont'd)**

- 1083. Statutory provisions.
- 1084. Discretion of court.
- 1085. Proceedings in which costs and fees are recoverable.
- 1086. — In general.
- 1087. — Civil actions.
- 1088. — Cases sounding in tort.
- 1089. — Administrative proceedings.
- 1090. Persons entitled; eligibility.
- 1091. — In general.
- 1092. — Pro se litigants.
- 1093. — Deterrence of litigant due to costs.
- 1094. — Maximum net worth or number of employees.
- 1095. Entities subject to liability.
- 1096. Immunity and waiver.
- 1097. — In general.
- 1098. — Contractual waivers.

2. GROUNDS.

- 1101. In general.
- 1102. Results of litigation; prevailing party.
- 1103. Basis for government's position; substantial justification.
- 1104. Particular cases and contexts.
- 1105. — In general.
- 1106. — Agriculture and rural development.
- 1107. — Alcohol, tobacco, and firearms.
- 1108. — Aliens, immigration, and citizenship.
- 1109. — Armed services.
 - (1). In general.
 - (2). Veterans' benefits.
- 1110. — Aviation.
- 1111. — Contracts and contract claims.
- 1112. — Customs and international trade.
- 1113. — Education.
- 1114. — Elections.
- 1115. — Eminent domain, condemnation, and takings.
- 1116. — Energy and telecommunications.
- 1117. — Environment and public lands.
 - (1). In general.
 - (2). Historical preservation.
 - (3). Plants and wildlife; endangered species.

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**II. LIABILITIES OF AND CLAIMS AGAINST
UNITED STATES.(Cont'd)**

- (4). Woods and forests.
- 1118. — Financial institutions.
- 1119. — Forfeitures.
- 1120. — Health.
 - (1). In general.
 - (2). Health insurance and benefits.
 - (3). Medicare and Medicaid.
- 1121. — Housing and urban development.
- 1122. — Indians.
- 1123. — Insurance.
- 1124. — Intellectual property.
- 1125. — Labor and employment.
 - (1). In general.
 - (2). Public employment; civil service.
- 1126. — Prisons, prisoners, and detainees.
 - (1). In general.
 - (2). Habeas corpus.
- 1127. — Public assistance.
 - (1). In general.
 - (2). Social security in general.
 - (3). Disability benefits and supplemental security income.
- 1128. — Securities regulation.
- 1129. — Taxation; Internal Revenue.
- 1130. — Torts and tort claims.
- 1131. — Trade regulation and economic development.
- 1132. Special circumstances.
- 1133. — In general.
- 1134. — Particular cases and contexts.
- 1135. Bad faith or improper purpose.
- 1136. — In general.
- 1137. — Particular cases and contexts.

**3. EXPENSES RECOVERABLE
AND AMOUNT THEREOF.**

- 1141. In general.
- 1142. Reasonableness in general.
- 1143. Services of paralegals and nonattorneys.
- 1144. Depositions and discovery.
- 1145. Experts and expert witnesses.
- 1146. Legal research.
- 1147. Travel.
- 1148. Filing, copies, and transcripts.
- 1149. Attorney fees.
- 1150. — In general.

**II. LIABILITIES OF AND CLAIMS AGAINST
UNITED STATES.(Cont'd)**

- 1151. — Lodestar.
- 1152. — Excessive hours.
- 1153. — Success of claims.
 - (1). In general.
 - (2). Partial or limited success; pro rata reduction.
- 1154. — Particular awards.
- 1155. Enhancement.
- 1156. — In general.
- 1157. — Distinctive knowledge or specialized skill.
- 1158. — Limited availability of qualified attorneys.
- 1159. — Exceptional success.
- 1160. — Other special factors.
- 1161. — Cost-of-living adjustment.
- 1162. Reduction.
- 1163. — In general.
- 1164. — Unreasonable protraction of final resolution.
- 1165. Contingency fees.
- 1166. — In general.
- 1167. — Particular cases and contexts.

4. PROCEEDINGS.

- 1171. In general.
- 1172. Prerequisites, jurisdiction, and standing.
- 1173. Timeliness of application or other request.
- 1174. — In general.
- 1175. — What time period applies.
- 1176. — Finality of judgment or other determination.
- 1177. — Effect of delay; excuses; tolling.
- 1178. Proof and documentation of expenses; evidence.
- 1179. — In general.
- 1180. — Presumptions and burden of proof.
- 1181. — Degree of proof.
- 1182. — Weight and sufficiency.
- 1183. Findings, determination, and order.
- 1184. — In general.
- 1185. — Necessity.
- 1186. — Sufficiency.
- 1187. Payment to attorney or client.
- 1188. Review of agency award.

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5. COSTS AND FEES INCURRED ON APPEAL.

1191. In general.

III. LIABILITIES TO AND CLAIMS BY UNITED STATES.

- 1201. In general.
- 1202. Debts due the United States in general.
- 1203. Debt collection procedures.
- 1204. — In general.
- 1205. — Prejudgment remedies.
- 1206. — Compromise and settlement.
- 1207. — Fines and restitution.
- 1208. Priority of United States as creditor.
- 1209. — In general.
- 1210. — Statutory provisions.
- 1211. — What constitutes "claim," "debt," or "debtor".
- 1212. — Nature of priority.
- 1213. — Insolvency of debtor.
 - (1). In general.
 - (2). Act of bankruptcy.
 - (3). Specific debtors.
- 1214. — Claims and agencies entitled to priority.
- 1215. — Priority in time.
- 1216. — Perfection of lien.
- 1217. — Priority over state or local government claims.
- 1218. — Liability for disregarding priority.
- 1219. Recovery of payments by United States; recoupment.
- 1220. Tort claims by United States.
- 1221. Actions by United States.
- 1222. — In general.
- 1223. — Capacity of United States to sue.
 - (1). In general.
 - (2). Statutory authority.
 - (3). Parens patriae.
- 1224. — Rights of action by United States or United States officers.
 - (1). In general.
 - (2). Statutory authority.
 - (3). Common-law remedies.
- 1225. — Authority to sue in name of United States or officer.
- 1226. — Standing.
- 1227. — Exhaustion of remedies.
- 1228. — Defenses in general.
- 1229. — Set-off and counterclaim against United States.

III. LIABILITIES TO AND CLAIMS BY UNITED STATES.(Cont'd)

- (1). In general.
- (2). Nature of claim in general.
- (3). Unliquidated damages.
- (4). Torts.
- (5). Independent transactions.
- (6). Presentation and disallowance of claim.
- (7). Judgment for excess.
- 1230. — Jurisdiction.
- 1231. — Venue.
- 1232. — Time to sue, limitations, and laches.
- 1233. — Parties.
- 1234. — Process.
 - (1). In general.
 - (2). Method of service; who must be served.
 - (3). Time of service.
- 1235. — Appearance and representation by attorney.
- 1236. — Pleading.
- 1237. — Evidence.
 - (1). In general.
 - (2). Presumptions and burden of proof.
 - (3). Admissibility.
 - (4). Weight and sufficiency.
- 1238. — Damages.
 - (1). In general.
 - (2). Elements and measure of damages.
 - (3). Punitive damages.
- 1239. — Trial.
- 1240. — Judgment.
- 1241. — Execution and enforcement of judgment.
- 1242. — Interest.
- 1243. — Costs and fees.

IV. FALSE CLAIMS.

- 1251. In general.
- 1252. Statutory provisions.
- 1253. Elements.
- 1254. — In general.
- 1255. — Injury or financial loss.
- 1256. — Intent.
- 1257. — False claim.

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IV. FALSE CLAIMS.(Cont'd)

- 1258. — False certification.
- 1259. — Materiality.
- 1260. — Submission to government.
- 1261. — Reverse false claims.
- 1262. Who may be liable.
- 1263. — In general.
- 1264. — Particular actors.
 - (1). In general.
 - (2). Contractors and subcontractors.
 - (3). Government actors.
- 1265. Who may bring action for false claims.
- 1266. — In general.
- 1267. — Standing.
- 1268. — United States as plaintiff or intervenor.
- 1269. Jurisdictional bars.
- 1270. — In general.
- 1271. — Public disclosure bar.
 - (1). In general.
 - (2). Original source exception.
- 1272. — First-to-file bar.
- 1273. — Other particular bars.
- 1274. Proceedings.
- 1275. — In general.
- 1276. — Time; limitations.
- 1277. — Pleading; complaint filed under seal.
- 1278. — Civil investigative demands.
- 1279. — Dismissal or settlement.
- 1280. — Restricting participation by plaintiff.
- 1281. — Evidence.
- 1282. — Trial and judgment.
- 1283. — Costs and fees.
- 1284. Damages.
- 1285. — In general.
- 1286. — Number of “forfeitures”.
- 1287. — Plaintiff’s right to share of award.
- 1288. — Measure of damages.
- 1289. — Double or treble damages.
- 1290. — Particular amounts.
- 1291. Civil penalties.
- 1292. Forfeiture of fraudulent claims.
- 1293. Offenses and prosecutions.
- 1294. — In general.
- 1295. — Elements.
 - (1). In general.
 - (2). Falsity.

IV. FALSE CLAIMS.(Cont'd)

- (3). Materiality.
- (4). Intent.
- (5). Agency of United States.
- 1296. — Proceedings.
 - (1). In general.
 - (2). Indictment and information.
 - (3). Evidence.
 - (4). Trial.
- 1297. — Sentence and punishment.

V. EMPLOYEES, OFFICERS, AND AGENTS.

(A) IN GENERAL.

- 1301. In general.
- 1302. Appointment and hiring.
- 1303. — In general.
- 1304. — Eligibility.
- 1305. — Qualification.
- 1306. — Probationary period.
- 1307. — Failure to hire.
- 1308. Term and duration; vacancies.
- 1309. Removal or other adverse action.
- 1310. — In general; power to remove.
- 1311. — Grounds.
 - (1). In general.
 - (2). Conduct or misconduct in general.
 - (3). Competence or performance.
 - (4). Disobedience or insubordination.
 - (5). Alcohol or drug use.
 - (6). National security concerns.
 - (7). Economic or budgetary concerns; layoffs.
 - (8). Abolition of position; reorganization or privatization.
- 1312. — Exercise of rights; retaliation.
- 1313. — Reporting or opposing wrongdoing; “whistleblowing”.
- 1314. — Suspension or other discipline.
 - (1). In general; power to suspend or discipline.
 - (2). Grounds.
 - (3). Exercise of rights; retaliation.
 - (4). Reporting or opposing wrongdoing; “whistleblowing”.
- 1315. — Proceedings to impose adverse action.
 - (1). In general.
 - (2). Time.
 - (3). Statement of reasons.

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V. EMPLOYEES, OFFICERS, AND AGENTS.(Cont'd)

- (4). Notice and hearing.
- (5). Evidence.
- (6). Determination.
- (7). Judicial review or intervention.
- 1316. — Grievances and grievance proceedings.
- 1317. — Actions.
 - (1). In general.
 - (2). Exhaustion of remedies.
- 1318. — Relief.
 - (1). In general.
 - (2). Monetary relief; back pay.
 - (3). Reinstatement.
- 1319. — Costs and fees.
- 1320. Voluntary termination; resignation.
- 1321. — In general.
- 1322. — Constructive discharge.
- 1323. Appointment and tenure of officers.
- 1324. — In general.
- 1325. — Power to appoint.
- 1326. — Eligibility.
- 1327. — Qualification.
- 1328. — Term and duration; vacancies.
- 1329. — Recess appointments.
- 1330. — Removal or other adverse action.
 - (1). In general; power to remove.
 - (2). Grounds.
 - (3). — In general.
 - (4). — Misconduct, malfeasance, or misfeasance.
 - (5). Retaliation; “whistleblowing”.
 - (6). Suspension or other discipline.
 - (7). Proceedings to impose adverse action.
 - (8). Actions and relief.
- 1331. — Voluntary termination; resignation.
- 1332. Promotion, demotion, assignment, and transfer.
- 1333. — In general.
- 1334. — Retaliation; “whistleblowing”.
- 1335. Veterans’ preference.
- 1336. Retirement.
- 1337. Authority and powers.
- 1338. — In general.
- 1339. — Ultra vires acts in general.
- 1340. — Delegation in general.

V. EMPLOYEES, OFFICERS, AND AGENTS.(Cont'd)

- 1341. — Deputies and assistants.
 - 1342. — Ministerial officers.
 - 1343. — De facto officers.
 - 1344. — Agents and employees.
 - 1345. — Special authority or employment.
 - 1346. — Disabilities.
 - 1347. Duties and performance thereof.
 - 1348. — In general.
 - 1349. — Custody and care of public funds and other property.
 - 1350. — Accounting, audit, and settlement.
 - 1351. — Ethics and conflicts of interest in general.
 - 1352. — Confidentiality.
 - 1353. — Outside activities.
 - (1). In general.
 - (2). Prepublication review.
 - 1354. — Former employees, officers, and agents.
 - 1355. Independent counsel.
 - 1356. — In general.
 - 1357. — Authority and powers.
 - 1358. — Duties and performance thereof.
 - 1359. Immunity of United States from employment claims.
- (B) COMPENSATION.**
- 1361. In general; power to regulate.
 - 1362. Form, rate, and amount in general.
 - 1363. Salaries.
 - 1364. Commissions and fees.
 - 1365. Additional compensation; extra services.
 - 1366. Overtime compensation.
 - 1367. Increase or reduction.
 - 1368. Back pay in general.
 - 1369. Compensation during absence; time off and leave.
 - 1370. Severance pay and benefits.
 - 1371. Reimbursement of expenses; indemnification.
 - 1372. Deductions and offsets.
 - 1373. Allowance, payment, and collection.
 - 1374. — In general.
 - 1375. — Administrative proceedings.
 - (1). In general.
 - (2). Time for proceedings; limitations.

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**V. EMPLOYEES, OFFICERS,
AND AGENTS.(Cont'd)**

- (3). Judicial review or intervention.
- 1376. — Actions.
 - (1). In general.
 - (2). Time for proceedings; limitations.
 - (3). Exhaustion of remedies.
 - (4). Pleading.
- 1377. — Evidence.
- 1378. Recovery of payments; recoupment.

(C) PENSIONS AND BENEFITS.

- 1381. In general.
- 1382. Eligibility and right to benefits.
- 1383. — In general.
- 1384. — Pensions and retirement benefits.
- 1385. — Deferred compensation.
- 1386. — Health and medical benefits.
- 1387. — Disability benefits.
- 1388. — Death benefits.
- 1389. Funds and contributions.
- 1390. Amount and computation.
- 1391. — In general.
- 1392. — Service credit.
- 1393. Allowance, payment, and collection.
- 1394. — In general.
- 1395. — Administrative proceedings.
 - (1). In general.
 - (2). Time for proceedings; limitations.
 - (3). Judicial review or intervention.
- 1396. — Actions.
 - (1). In general.
 - (2). Time for proceedings; limitations.
 - (3). Exhaustion of remedies.
 - (4). Pleading.
- 1397. — Evidence.
- 1398. Revocation, suspension, or termination.
- 1399. Recovery of payments; recoupment.

(D) LIABILITIES.

1. IN GENERAL.

- 1401. In general.
- 1402. Official acts in general.
- 1403. Negligence or misconduct in general.
- 1404. Discretionary acts or functions in general.
- 1405. Privilege or immunity; good faith.
- 1406. — In general; official immunity.

**V. EMPLOYEES, OFFICERS,
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- 1407. — Sovereign immunity, and relation of official immunity thereto.
- 1408. — Absolute immunity.
- 1409. — Qualified immunity.
- 1410. Scope of employment; Westfall Act.
- 1411. — In general; substitution of United States as defendant.
- 1412. — Certification or other determination.
- 1413. — Judicial review.
- 1414. Particular cases and contexts.
- 1415. — In general.
- 1416. — Particular employees, officers, and agents.
 - (1). In general.
 - (2). Privilege or immunity; good faith.
 - (3). Scope of employment; Westfall Act.
- 1417. — Particular torts.
 - (1). In general.
 - (2). Privilege or immunity; good faith.
 - (3). Scope of employment; Westfall Act.
- 1418. — Medical malpractice claims.
 - (1). In general.
 - (2). Privilege or immunity; good faith.
 - (3). Scope of employment; Westfall Act.
- 1419. — Defamation, disclosure, and privacy claims.
 - (1). In general.
 - (2). Privilege or immunity; good faith.
 - (3). Scope of employment; Westfall Act.
- 1420. — Criminal law enforcement and investigation.
 - (1). In general.
 - (2). Privilege or immunity; good faith.
 - (3). Scope of employment; Westfall Act.
- 1421. — Employment practices.
 - (1). In general.
 - (2). Privilege or immunity; good faith.
 - (3). Scope of employment; Westfall Act.
- 1422. Existence and exclusivity of other remedies.
- 1423. — In general.

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V. EMPLOYEES, OFFICERS, AND AGENTS.(Cont'd)

- 1424. — Federal Tort Claims Act.
- 1425. — Other particular remedies.
- 1426. — Exhaustion of remedies.
- 1427. Persons liable.
- 1428. — In general; individual or official capacity.
- 1429. — Personal involvement; vicarious liability and respondeat superior.
- 1430. Private individuals or entities; contractors.
- 1431. — In general.
- 1432. — Privilege or immunity; good faith.
- 1433. Actions.
- 1434. — In general.
- 1435. — Jurisdiction and venue.
- 1436. — Time for proceedings; limitations.
- 1437. — Parties; standing.
- 1438. — Process.
- 1439. — Pleading.
- 1440. — Evidence.
- 1441. — Trial, judgment, and relief.
- 1442. — Costs and fees.
- 1443. Liabilities on official bonds.
- 1444. — In general; nature of liability.
- 1445. — Discharge of sureties; rights and remedies of sureties.
- 1446. — Acts constituting breach of bond; accrual of liability.
- 1447. — Extent of liability.
- 1448. — Summary remedies.
- 1449. — Actions.

2. CONSTITUTIONAL VIOLATIONS; BIVENS CLAIMS.

- 1451. In general.
- 1452. Particular rights, acts, and claims.
- 1453. — In general.
- 1454. — Education.
- 1455. — Criminal law enforcement and investigation.
 - (1). In general.
 - (2). Searches, seizures, and forfeitures.
 - (3). Arrest and detention in general.
 - (4). Use of force.
 - (5). Search incident to arrest.
 - (6). Pretrial detention.

V. EMPLOYEES, OFFICERS, AND AGENTS.(Cont'd)

- (7). Criminal prosecutions.
- 1456. — Prisons.
- 1457. — Internal revenue.
- 1458. — Aliens, immigration, and customs.
- 1459. — War, national emergency, and armed services.
- 1460. — Employment practices.
- 1461. Existence and exclusivity of other remedies.
- 1462. — In general.
- 1463. — Particular remedies.
- 1464. — Exhaustion of remedies.
- 1465. Color of law.
- 1466. Persons liable.
- 1467. — In general; individual or official capacity.
- 1468. — Personal involvement; vicarious liability and respondeat superior.
- 1469. Privilege or immunity; good faith.
- 1470. — In general.
- 1471. — Absolute immunity in general.
- 1472. — Qualified immunity in general.
- 1473. — Particular actors and situations in general.
- 1474. — Education.
- 1475. — Criminal law enforcement and investigation.
 - (1). In general.
 - (2). Searches, seizures, and forfeitures.
 - (3). Arrest and detention in general.
 - (4). Use of force.
 - (5). Search incident to arrest.
 - (6). Pretrial detention.
 - (7). Criminal prosecutions.
- 1476. — Prisons.
- 1477. — Internal revenue.
- 1478. — Aliens, immigration, and customs.
- 1479. — War, national emergency, and armed services.
- 1480. — Employment practices.
- 1481. — Judges, courts, and judicial officers; judicial immunity.
- 1482. — Attorneys.
- 1483. — Marshals.
- 1484. Private individuals or entities; contractors.
- 1485. — In general; color of law.

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- 1486. — Privilege or immunity; good faith.
- 1487. Actions.
- 1488. — In general.
- 1489. — Jurisdiction and venue.
- 1490. — Time for proceedings; limitations.
- 1491. — Parties; standing.
- 1492. — Process.
- 1493. — Pleading.
- 1494. — Evidence.
- 1495. — Trial and judgment.
- 1496. — Damages or other relief.
 - (1). In general.
 - (2). Punitive damages.
- 1497. — Costs and fees.

(E) CRIMINAL RESPONSIBILITY.

- 1501. In general.
- 1502. Offenses.
- 1503. — In general.
- 1504. — Conflict of interest.
- 1505. — Improper income supplementation.
- 1506. — Disclosure of confidential information.
- 1507. Prosecution and punishment.
- 1508. Liability under state law; immunity.

**(F) CONGRESSIONAL EMPLOYEES,
OFFICERS, AND AGENTS.**

- 1511. In general.
- 1512. Removal or other adverse employment action.
- 1513. Compensation.
- 1514. Pensions and benefits.
- 1515. Liabilities.
- 1516. — In general.
- 1517. — Constitutional violations; Bivens claims.
- 1518. Criminal responsibility.

VI. CORPORATIONS, SPECIAL INSTRUMENTALITIES, AND SIMILAR ENTITIES CONTROLLED BY UNITED STATES.

- 1521. In general.
- 1522. Nonappropriated fund instrumentalities in general.

VI. CORPORATIONS, SPECIAL INSTRUMENTALITIES, AND SIMILAR ENTITIES CONTROLLED BY UNITED STATES.(Cont'd)

- 1523. Independent establishments in general.
- 1524. Powers, liabilities, and activities in general.
- 1525. Particular entities.
- 1526. — In general.
- 1527. — Trade, business, finance, and economic development in general.
- 1528. — Small business investment companies.
- 1529. — Housing and home financing.
- 1530. — Maritime matters.
- 1531. — Museums, research, and culture.
- 1532. — Tennessee Valley Authority.
- 1533. Power to sue and be sued; immunity.
- 1534. — In general.
- 1535. — Particular entities.
- 1536. — Tort claims.
- 1537. Actions.
- 1538. — In general.
- 1539. — Right of action; nature and form of remedy.
- 1540. — Jurisdiction and venue.
- 1541. — Time for proceedings; limitations.
- 1542. — Parties; standing.
- 1543. — Process.
- 1544. — Pleading.
- 1545. — Evidence.
- 1546. — Trial, judgment, and relief.
 - (1). In general.
 - (2). Questions of law or fact.
 - (3). Equitable relief; injunctions.
- 1547. — Costs and fees.
- 1548. Insolvency, receivership, and liquidation.
- 1549. — In general.
- 1550. — Small business investment companies.
- 1551. — Housing and home financing entities.
- 1552. — Other particular entities.
- 1553. — Actions and proceedings.
- 1554. Employees, officers, and agents.
- 1555. — In general.
- 1556. — Removal or other adverse employment action.
- 1557. — Compensation.

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VI. CORPORATIONS, SPECIAL INSTRUMENTALITIES, AND SIMILAR ENTITIES CONTROLLED BY UNITED STATES.(Cont'd)

- 1558. — Pensions and benefits.
- 1559. — Liabilities.
 - (1). In general.
 - (2). Constitutional violations; Bivens claims.
- 1560. — Criminal responsibility.

394. UNITED STATES MAGISTRATE JUDGES

SUBJECTS INCLUDED

- United States Magistrate Judges (formerly United States Magistrates and United States Commissioners)
- Appointment, qualification, tenure, and removal of such judges and their predecessors
- Their compensation
- Their jurisdiction, power, authority, status, and liability
- Reference, delegation, and designation of matters to them, including their designation as special masters
- Proceedings before them in general
- Reports and recommendations by them and objections thereto
- Review of their determinations by the district court and in the Court of Appeals

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Bail, see BAIL
- Commissioners in admiralty, see ADMIRALTY
- Commissioners in chancery, see EQUITY
- Conclusiveness of rulings by, see JUDGMENT
- Referees, see FEDERAL CIVIL PROCEDURE, REFERENCE
- Reference of bankruptcy matters and bankruptcy appeals to magistrates, see BANKRUPTCY
- Searches and seizures, see SEARCHES AND SEIZURES

State and local commissioners and magistrates, see COURT COMMISSIONERS, JUSTICES OF THE PEACE, REFERENCE

Substantive rulings in particular proceedings by and before commissioners, magistrates, or magistrate judges, see ARREST, CONTEMPT, CRIMINAL LAW, and other specific topics

- I. IN GENERAL, ¶101–120.
- II. JURISDICTION, POWERS, AND AUTHORITY TO ACT, PRESIDE, OR RULE, ¶121–200.
 - (A) IN GENERAL, ¶121–130.
 - (B) PARTICULAR CASES, CONTEXTS, AND RULINGS, ¶131–200.
- III. PROCEEDINGS BEFORE MAGISTRATE JUDGES, ¶201–210.
- IV. REVIEW OR SUPERVISION BY DISTRICT COURT, ¶211–260.
- V. REVIEW BY COURT OF APPEALS; DIRECT APPEAL, ¶261–275.

I. IN GENERAL.

- 101. In general.
- 102. Appointment, eligibility, and qualification.
- 103. Term, tenure, and retirement.
- 104. Removal or termination.
- 105. Bias; recusal.
- 106. Discipline.
- 107. Liabilities.
- 108. — In general.
- 109. — Immunity.
- 110. Disabilities.
- 111. Compensation.
- 112. — In general.
- 113. — Issuing warrants and other orders, drawing complaints, and administering oaths.
- 114. — Docket fees; fees for entering returns or filing papers.
- 115. — Copies of papers.
- 116. — Hearings.
- 117. Status.
- 118. — In general.
- 119. — Constitutional status.

394. UNITED STATES MAGISTRATE JUDGES

II. JURISDICTION, POWERS,
AND AUTHORITY TO ACT,
PRESIDE, OR RULE.

(A) IN GENERAL.

- 121. In general.
- 122. Reference, designation, or delegation.
- 123. — In general.
- 124. — Objections and proceedings thereon.
- 125. — Withdrawal or vacation.
- 126. Consent.
- 127. — In general.
- 128. — Objections and proceedings thereon.
- 129. — Withdrawal or vacation.

(B) PARTICULAR CASES, CONTEXTS,
AND RULINGS.

- 131. In general.
- 132. Nature of case, proceeding, dispute, or issue in general.
- 133. Pretrial and other preliminary matters in general.
- 134. Hearing, trial, findings, and determination in general.
- 135. Dispositive orders, rulings on merits, and dismissal in general.
- 136. Jurisdiction and venue.
- 137. Parties, process, and pleading.
- 138. — In general.
- 139. — Answer and subsequent pleadings.
- 140. — Amendment of pleadings.
- 141. — Dismissal.
- 142. — Judgment on pleadings.
- 143. — Intervention.
- 144. — Class actions.
- 145. Discovery.
- 146. Consolidation, severance, continuance, and stay.
- 147. Jury.
- 148. — In general.
- 149. — Selection and impaneling of jurors; voir dire.
- 150. Evidence and witnesses.
- 151. — In general.
- 152. — Evidentiary hearing.
- 153. Expert evidence and witnesses.
- 154. Judgment.
Judgment on pleadings, see ¶142.
- 155. — In general.

II. JURISDICTION, POWERS, AND
AUTHORITY TO ACT, PRESIDE,
OR RULE. (Cont'd)

- 156. — Default judgment and opening thereof.
- 157. — Summary judgment.
- 158. — Enforcement of judgment.
- 159. Proceedings after trial or judgment.
- 160. Remand.
- 161. Remedies and relief.
- 162. — In general.
- 163. — Injunctive relief; temporary restraining order.
- 164. Costs and attorney fees.
- 165. Indigent parties; proceedings in forma pauperis.
- 166. Sanctions.
- 167. — In general.
- 168. — Discovery sanctions.
- 169. Compromise and settlement.
- 170. — In general.
- 171. — Class actions.
- 172. Criminal matters.
- 173. — In general.
- 174. — Nature of offense, proceeding, dispute, or issue in general.
- 175. — Pretrial and other preliminary matters in general.
- 176. — Hearing, trial, findings, and determination in general.
- 177. — Dispositive orders, rulings on merits, and dismissal in general.
- 178. — Arrest and detention.
- 179. — Indictment, information, or complaint.
- 180. — Arraignment and plea.
- 181. — Jury.
 - (1). In general.
 - (2). Selection and impaneling of jurors; voir dire.
- 182. — Evidence and witnesses.
- 183. — Expert evidence and witnesses.
- 184. — Sentencing and punishment.
- 185. — Criminal records; expungement.
- 186. Extraordinary relief; writs.
- 187. — In general.
- 188. — Habeas corpus.
- 189. Transfer of prisoners; extradition and detainees.
- 190. Contempt.

394. UNITED STATES MAGISTRATE JUDGES

**III. PROCEEDINGS BEFORE
MAGISTRATE JUDGES.**

- 201. In general.
- 202. Determination and disposition.
- 203. — In general.
- 204. — Report and recommendation.

**IV. REVIEW OR SUPERVISION
BY DISTRICT COURT.**

- 211. In general.
- 212. Objections to report and recommendation.
- 213. — In general.
- 214. — Notice of right to object; requisites and sufficiency.
- 215. — Time for objecting; extension.
- 216. Procedure and proceedings for review or on appeal.
- 217. — In general.
- 218. — Jurisdiction and authority of district court on review or appeal.
- 219. — Sua sponte review by district court.
- 220. — Persons entitled to seek review; parties; standing.
- 221. — Estoppel to allege error; invited error.
- 222. — Time issues in cases not involving objections to reports and recommendations.
- 223. — Effect of review by or appeal to district court.
- 224. — Supersedeas or stay of proceedings pending review by or appeal to district court.
- 225. Decisions reviewable.
- 226. — In general.
- 227. — Mootness.
- 228. Presentation and reservation of grounds for review; plain error review.
- 229. — In general.
- 230. — Failure to object; uncontested findings.
 - (1). In general.
 - (2). Waiver of right to review in general.
 - (3). Frivolous, conclusive, or general objections.
 - (4). Plain error, clear error, and manifest injustice review.

**IV. REVIEW OR SUPERVISION BY
DISTRICT COURT.(Cont'd)**

- 231. — Assertion of issues, theories, or claims for first time in objections.
- 232. Record and supplementation thereof; briefs; transcript.
- 233. Hearing.
- 234. Scope and extent of review.
- 235. — In general.
- 236. — Matters, evidence, or questions considered.
- 237. — Standard of review.
 - (1). In general.
 - (2). Deference in general.
 - (3). De novo review in general.
 - (4). Discretion in general.
 - (5). — In general.
 - (6). — Discretion of district court to choose standard of review.
 - (7). — Abuse of discretion review in general.
 - (8). Clear error, manifest error, or contrary to law in general.
 - (9). Particular cases, contexts, and questions.
 - (10). — In general.
 - (11). — Procedural matters.
 - (12). — Remedial matters.
 - (13). — Substantive matters.
- 238. Presumptions and burdens.
- 239. — In general.
- 240. — Presumptive weight of magistrate judge's recommendation.
- 241. — Particular cases, contexts, and questions.
- 242. Harmless or reversible error.
- 243. — In general.
- 244. — Particular cases, contexts, and questions.
- 245. Waiver of error before district court.
- 246. Determination and disposition.
- 247. — In general.
- 248. — Affirmance.
- 249. — Modification.
- 250. — Reversal or vacation.
- 251. — Rendering judgment; dismissing claims or parties.
- 252. — Remand, recommittal, or referral back to magistrate judge.
- 253. — Reconsideration.

**V. REVIEW BY COURT OF APPEALS;
DIRECT APPEAL.**

- 261. In general.
- 262. Objections to report and recommendation.
- 263. Procedure and proceedings for review or on appeal.
- 264. Decisions reviewable.
- 265. Presentation and reservation of grounds for review; plain error review.
- 266. Record and supplementation thereof; briefs; transcript.
- 267. Hearing.
- 268. Scope and extent of review.
- 269. — In general.
- 270. — Matters, evidence, or questions considered.
- 271. — Standard of review.
 - (1). In general.
 - (2). De novo review in general.
 - (3). Abuse of discretion review in general.
 - (4). Clear error review in general.
 - (5). Particular cases, contexts, and questions.
- 272. Presumptions and burdens.
- 273. Harmless or reversible error.
- 274. Waiver of error before appellate court.
- 275. Determination and disposition.

395. UNITED STATES MARSHALS

SUBJECTS INCLUDED

Marshals of the United States, and their deputies, assistants, and employees
Their appointment, qualification, and tenure of office or employment
Their rights, powers, duties, and liabilities

**SUBJECTS EXCLUDED AND COVERED
BY OTHER TOPICS**

Air marshals, see AVIATION
Bailiffs and similar court officials, see COURTS II(B)

395. UNITED STATES MARSHALS

County sheriffs and constables, see SHERIFFS AND CONSTABLES

District of Columbia, marshal of, see DISTRICT OF COLUMBIA

Liability for constitutional violations, see UNITED STATES V(D)2

Local marshals and police officers, see MUNICIPAL CORPORATIONS

Particular writs and specific duties, see ADMIRALTY, BANKRUPTCY, INTERNAL REVENUE, and other specific topics

- 101. In general.
- 102. Appointment, qualification, and tenure.
- 103. — In general.
- 104. — Deputies, assistants, and employees in general.
- 105. — Removal or other adverse action in general.
- 106. — Exercise of rights; retaliation.
- 107. — Reporting or opposing wrongdoing; “whistleblowing”.
- 108. — Suspension or other discipline.
- 109. — Promotion, demotion, assignment, and transfer.
- 110. — Voluntary termination, resignation, and retirement.
- 111. — Actions and proceedings.
 - (1). In general.
 - (2). Exclusive and concurrent remedies; exhaustion.
 - (3). Parties, process, and pleading.
 - (4). Evidence, trial, and judgment.
 - (5). Relief; costs and fees.
- 112. Authority, powers, and duties.
- 113. — In general.
- 114. — Security and law enforcement.
- 115. — Arrest; custody and control of prisoners.
- 116. Compensation.
- 117. — In general.
- 118. — Particular services or activities.
 - (1). In general.
 - (2). Service of process or other papers.
 - (3). Custody and disposition of property; sale.
 - (4). Selection and summoning of jurors.
 - (5). Court attendance.
 - (6). Security and law enforcement.

395. UNITED STATES MARSHALS

- (7). Arrest; custody and control of prisoners.
- 119. — Overtime compensation.
- 120. — Expenses and losses.
 - (1). In general.
 - (2). Mileage and travel expenses.
 - (3). Indemnification.
- 121. — Allowance, payment, and collection; actions and proceedings.
- 122. — Recovery of payments; recoupment.
- 123. Pensions and benefits.
- 124. Liabilities.
 - Liability for constitutional violations, see UNITED STATES V(D)2.*
- 125. — In general.
- 126. — Particular cases and contexts.
 - (1). In general.
 - (2). Security and law enforcement.
 - (3). Arrest; custody and control of prisoners.
- 127. — Privilege or immunity; good faith.
 - (1). In general.
 - (2). Security and law enforcement.
 - (3). Arrest; custody and control of prisoners.
- 128. — Actions and proceedings.
 - (1). In general.
 - (2). Exclusive and concurrent remedies; exhaustion.
 - (3). Parties, process, and pleading.
 - (4). Evidence, trial, and judgment.
 - (5). Relief; costs and fees.
- 129. Liabilities on official bonds.
- 130. Criminal responsibility.

396. UNLAWFUL ASSEMBLY

SUBJECTS INCLUDED

Meeting of a number of persons with intent mutually to assist one another in execution of a common purpose by the use of force or other unlawful intent, and attempting or threatening such use of force, but without actually putting their unlawful design into execution

Nature and extent of criminal responsibility therefor, and grounds of defense
Prosecution and punishment of such acts as public offenses

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Right to assemble peaceably, see CONSTITUTIONAL LAW XIV

Riotous execution of common purpose of unlawful assembly, see RIOT

- 1. Nature and elements of offenses.
- 2. Indictment or information.
- 3. Evidence.
- 4. Trial and review.

396A. URBAN RAILROADS

SUBJECTS INCLUDED

Construction, maintenance, regulation, and operation of fixed rail transit systems in cities on the surface or elevated, depressed, or underground

Rights, duties, and liabilities as to the public and as to individuals, in respect of the management and operation of systems, otherwise than in the capacity of employer or carrier

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Carriers, regulation in general, see CARRIERS

Corporations in general, matters applicable to, see CORPORATIONS AND BUSINESS ORGANIZATIONS

Eminent domain, power, and exercise thereof, see EMINENT DOMAIN

Employers, systems as, see LABOR AND EMPLOYMENT

Motor buses and similar carriers, see AUTOMOBILES, CARRIERS

Municipalities' powers to grant and regulate franchises and rights of way, and to aid urban railroads, see MUNICIPAL CORPORATIONS

Passengers, carriage of, see CARRIERS

398. USURY

Railroads in general, regulation, see RAILROADS

Taxation of urban railroads, see TAXATION

- I. ESTABLISHMENT, CONSTRUCTION, AND MAINTENANCE, ¶1-19.
- II. REGULATION AND OPERATION, ¶20-31.

I. ESTABLISHMENT, CONSTRUCTION, AND MAINTENANCE.

1. In general.
Injunctive relief, see INJUNCTION IV(P).
2. Constitutional and statutory provisions.
3. Determination as to necessity, location, and mode of construction.
4. Establishment or acquisition by public authorities.
5. Location.
6. Franchises or privileges; property rights.
7. Construction and maintenance.
- 7.1. — In general.
8. — Contracts.

II. REGULATION AND OPERATION.

20. In general.
21. Public operation or control.
22. Statutory or municipal regulations.
23. Injuries from operation.
- 23.1. — In general.
24. — Collision.
25. — Injuries to persons on or near tracks.
26. — Contributory negligence.
27. — Proximate cause.
28. — Injuries avoidable notwithstanding contributory negligence.
29. — Notice of claim for injury.
30. — Actions.
31. Offenses and penalties.

398. USURY

SUBJECTS INCLUDED

Compensation for use or forbearance of money at a rate greater than allowed by law

The reserving, taking, or paying such unlawful rate

Validity and effect of agreements therefor

Pleading usury and proof thereof as a defense

Civil and criminal liabilities and remedies for violations of usury laws

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Rate of interest allowed by law in general, see INTEREST

Rate of interest allowed by law on particular classes of transactions, see FINANCE, BANKING, AND CREDIT and other specific topics

I. USURIOUS CONTRACTS AND TRANSACTIONS, ¶1-133.

- (A) NATURE AND VALIDITY, ¶1-88.
- (B) RIGHTS AND REMEDIES OF PARTIES, ¶89-125.
- (C) RIGHTS AND REMEDIES OF THIRD PERSONS, ¶126-133.

II. PENALTIES AND FORFEITURES, ¶134-148.

III. CRIMINAL RESPONSIBILITY, ¶149.

I. USURIOUS CONTRACTS AND TRANSACTIONS.

(A) NATURE AND VALIDITY.

1. Nature of usury in general.
2. What law governs.
 - (1). In general.
 - (2). Place of making contract.
 - (3). Contract secured by mortgage or other lien.
 - (4). Contracts to be performed in place other than where made.
 - (5). Place of payment or enforcement.
3. Constitutional and statutory provisions.
4. — In general.
5. — Validity of usury laws.
6. — Construction and operation in general.
7. — Retroactive operation in general.
8. — Amendment and repeal.
9. — Effect on pre-existing contracts of change in statutory rate of interest.
10. Elements of usury.
11. — In general.

398. USURY

I. USURIOUS CONTRACTS AND TRANSACTIONS.(Cont'd)

12. — Intent, knowledge, and mutual assent of parties.
13. — Loan or forbearance.
14. — Agreement for payment of principal.
15. — Reservation, taking, or payment of or agreement for excessive interest.
16. Nature and subject-matter of transaction in general.
17. Loans or advances of money.
18. — In general.
19. — Depreciated currency or funds.
20. — Repayment in medium other than money.
21. Bills, notes, and other instruments for payment of money.
22. — In general.
23. — Usurious transactions between original parties.
24. — Consideration and legal inception before transfer.
25. — Usurious transfers in general.
26. — Discounts.
27. Forbearance or suspension of legal remedy or process.
28. Loans or sales of credit.
29. Loans of personal property.
30. Sales or exchanges of property.
31. — In general.
32. — Credit, deferred payments, and installments of price.
33. Leases or agreements for hiring of property.
34. Mortgages.
35. Pledges and other deposits as security.
36. Contracts and transactions involving hazard or contingency.
- 36.1. — In general.
37. — Hazard of principal in general.
38. — Partnership agreements.
39. — Payment of principal subject to contingency in general.
40. — Contracts for annuities.
41. — Interest subject to condition.
42. Rate and amount of interest in general.
43. Interest from prior date.
44. Interest in advance.
45. — In general.

I. USURIOUS CONTRACTS AND TRANSACTIONS.(Cont'd)

46. — Discount of bills and notes.
47. Interest payable at periods less than a year, and rests in computation.
48. Interest after maturity of debt.
49. Compound interest.
50. Mode of computation of interest.
51. Use of interest tables.
52. Contemporaneous collateral agreements in general.
53. Compensation for services or expenses or losses incurred by lender.
54. Commission or bonus to agent, broker, or other third person.
55. — In general.
56. — Agent or other representative of lender.
57. — Agent or other representative of borrower.
58. Commissions of factor or consignee making advances.
59. Stipulations as to insurance.
60. Stipulations as to payment of taxes.
61. Stipulations as to liquidated damages on breach of contract.
62. Stipulations as to attorney fees on default in payment.
63. Agreements to assume, secure, or pay other debt.
64. Subsequent collateral agreements in general.
65. Extension of time of payment.
66. Renewal of bill, note, or other obligation.
67. Usurious contract as consideration for new promise.
68. Agreements to assume, secure, or pay usurious debt.
69. Loans to pay usurious debts.
70. Custom or usage affecting contract or transaction.
72. Construction of contracts as to usury.
74. Effect of usury.
75. — In general.
76. — Validity of contract or indebtedness.
77. — Contract or debt originally valid.
78. — Interest.
79. — Excessive interest.
80. — Securities.
81. — Executed contracts.

398. USURY

I. USURIOUS CONTRACTS AND TRANSACTIONS.(Cont'd)

- 82. Persons who may take advantage of existence of usury in general.
- 83. Defense of usury by corporations.
- 84. Usury in issue and sale of municipal securities.
- 85. Persons affected by usury in general.
- 86. Usury in transactions through agents.
- 87. Usury in partnership transactions.
- 88. Purging contract of usury.

(B) RIGHTS AND REMEDIES OF PARTIES.

- 89. Relative rights of parties to contract or transaction in general.
- 90. Rescission or avoidance of contract or conveyance by act of party.
- 91. Equitable relief.
- 92. — In general.
- 93. — Cancellation or reformation of written instrument.
- 94. — Restraining or refusing enforcement of obligation or security.
- 95. — Tender or payment of amount actually received or due.
- 96. Enforcement of usurious contract or security.
- 97. — In general.
- 98. — Amount actually loaned, advanced, or paid.
- 99. Usury as a defense.
- 100. Application of payments of usury.
 - (1). In general.
 - (2). Time of payment.
- 101. Set-off and counterclaim of usury paid.
- 102. Recovery of usury paid.
 - (1). In general.
 - (2). Voluntary payments.
 - (3). Mode and sufficiency of payment as affecting recovery in general.
 - (4). Payment of judgment embracing usury.
 - (5). Persons liable.
 - (6). Form of remedy.
 - (7). Extent of recovery.
- 103. Estoppel to take advantage of usury.
- 104. Waiver or release of usury in general.
- 105. Effect of account stated.
- 106. Effect of compromise or settlement.

I. USURIOUS CONTRACTS AND TRANSACTIONS.(Cont'd)

- 107. Effect of judgment in action on contract or security.
- 108. Jurisdiction and venue of actions.
- 109. Time to sue, limitations, and laches.
See also LIMITATION OF ACTIONS.
- 110. Parties to actions.
- 111. Pleading.
 - (1). In general.
 - (2). Actions and proceedings to enforce usurious contract or security.
 - (3). Actions to recover usury paid.
 - (4). Equitable actions for relief against usury.
 - (5). Set-off or counterclaim of usury paid.
- 112. Evidence.
 - 112.1. — In general.
- 113. — Presumptions and burden of proof.
- 114. — Admissibility in general.
- 115. — Parol evidence.
- 116. — Competency of parties as witnesses.
- 117. — Weight and sufficiency.
- 119. Questions for jury.
- 120. Instructions.
- 121. Verdict and findings.
- 122. Judgment.
- 123. Execution and enforcement of judgment.
- 124. Appeal and error.
- 125. Costs.

(C) RIGHTS AND REMEDIES OF THIRD PERSONS.

- 126. Personal nature of right to relief or defense.
- 127. Privity with parties to usury in general.
- 128. Assignees of usurious contract or security.
- 129. Assignees of usurious borrower or other debtor.
- 130. Subsequent purchasers of incumbered property.
- 131. Subsequent incumbrancers.
- 132. Creditors of usurious borrower or incumbrancer.
- 133. Actions by or against third persons.

398. USURY

II. PENALTIES AND FORFEITURES.

- 134. Nature and scope in general.
- 135. What law governs.
- 136. Constitutional and statutory provisions.
- 137. Grounds of penalties.
- 138. Amount and extent of penalties.
- 139. Defenses to penalties.
- 140. Persons entitled to enforce penalties.
- 141. Persons liable for penalties.
- 142. Actions for penalties.
 - (1). In general.
 - (2). Time to sue and limitations.
See also LIMITATION OF ACTIONS.
 - (3). Pleading.
 - (4). Evidence.
 - (5). Verdict and judgment.
- 143. Set-off and counterclaim of penalties.
- 144. Grounds of forfeiture in general.
- 145. Forfeiture of principal of indebtedness.
- 146. Forfeiture of interest.
- 147. Enforcement and effect of forfeitures.
- 148. Disposition of proceeds.

III. CRIMINAL RESPONSIBILITY.

- 149. In general.
- 150. Prosecution and punishment.

399. VAGRANCY

SUBJECTS INCLUDED

An idle, wandering, disorderly, or criminal mode or course of life, punishable as such, independently of any specific offense committed

Prosecution and punishment thereof

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Children, vagrancy and delinquency, see INFANTS
- 1. Nature and elements of offenses.
 - 2. Indictment or information.
 - 3. Evidence.
 - 4. Trial and review.

- 5. Sentence and punishment.
- 6. Prevention or suppression of vagrancy.

400. VENDOR AND PURCHASER

SUBJECTS INCLUDED

Contracts for transfer of ownership of real property for a price in money or its equivalent, executory or executed

Rights and liabilities of parties to such contracts in general

Remedies relating thereto

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Assignees for benefit of creditors, receivers and the like, sales by, see CREDITORS' REMEDIES \Leftrightarrow 1172, RECEIVERS

Cancellation, surrender, etc. of contracts, see CANCELLATION OF INSTRUMENTS

Compelling performance of contracts, see SPECIFIC PERFORMANCE

Conveyances and merger of contracts therein, see DEEDS

Exchange or barter, transfers by way of, see EXCHANGE OF PROPERTY

Judgments, orders and decrees, sales under, see JUDICIAL SALES, EXECUTORS AND ADMINISTRATORS, PARTITION, and other specific topics

Judicial process, sales under, see CREDITORS' REMEDIES and other specific topics

Mortgages, enforcement by sale, see MORTGAGES AND DEEDS OF TRUST

Particular classes of persons, sales by or to, see ALIENS, IMMIGRATION, AND CITIZENSHIP, INFANTS, and other specific topics

Particular persons in fiduciary or representative capacity, sales by or to, see EXECUTORS AND ADMINISTRATORS, PRINCIPAL AND AGENT, and other specific topics

Particular species of property, sales of, see PUBLIC LANDS, MINES AND MINER-

400. VENDOR AND PURCHASER

ALS, HOMESTEAD, and other specific topics

Personal property, sale of, see SALES

Powers, sales in execution of in general, see POWERS

Reformation of contracts, see REFORMATION OF INSTRUMENTS

Statute of frauds, requirements of, see FRAUDS, STATUTE OF

Subrogation to lien or other rights of vendor, see SUBROGATION

Tax sales, see TAXATION

I. REQUISITES AND VALIDITY OF CONTRACT, ¶1-45.

II. CONSTRUCTION AND OPERATION OF CONTRACT, ¶46-81.

III. MODIFICATION OR RESCISSION OF CONTRACT, ¶82-127.

(A) BY AGREEMENT OF PARTIES, ¶82-87.

(B) RESCISSION BY VENDOR, ¶88-105.

(C) RESCISSION BY PURCHASER, ¶106-127.

IV. PERFORMANCE OF CONTRACT, ¶128-187.

(A) TITLE AND ESTATE OF VENDOR, ¶128-144.

(B) CONVEYANCE, ¶145-159.

(C) QUANTITY OF LAND AND APPURTENANCES, ¶160-167.

(D) PAYMENT OF PURCHASE MONEY, ¶168-187.

V. RIGHTS AND LIABILITIES OF PARTIES, ¶188-245.

(A) AS TO EACH OTHER, ¶188-209.

(B) AS TO THIRD PERSONS IN GENERAL, ¶210-219.

(C) BONA FIDE PURCHASERS, ¶220-245.

VI. REMEDIES OF VENDOR, ¶246-331.

(A) LIEN AND RECOVERY OF LAND, ¶246-300.

(B) ACTIONS FOR PURCHASE MONEY, ¶301-320.

(C) ACTIONS FOR DAMAGES, ¶321-333.

VII. REMEDIES OF PURCHASER, ¶334-353.

(A) RECOVERY OF PURCHASE MONEY PAID, ¶334-341.

(B) ACTIONS FOR BREACH OF CONTRACT, ¶342-353.

I. REQUISITES AND VALIDITY OF CONTRACT.

1. Nature of contract for sale of real property.

2. What law governs.

3. Sale distinguished from other transactions.

(1). In general.

(2). Lease or license.

(3). Power of sale or agency.

(4). Option or executory contract.

4. Real property which may be subject of sale.

4.1. — In general.

5. — Nature of property.

6. — Estate or interest of vendor in general.

7. — Particular estates and interests.

8. — After-acquired property.

9. Parties.

9.1. — In general.

10. — Capacity and right to sell and convey.

11. — Participation in and relation to transaction.

12. Consideration.

12.1. — In general.

13. — For sale.

14. — For purchase.

15. — Want or failure of consideration.

16. Offer to sell, and acceptance thereof.

(1). In general.

(2). Qualified or conditional offer.

(3). Time for acceptance.

(4). Qualified or conditional acceptance.

17. Offer to purchase, and acceptance thereof.

18. Options, preemptive rights, and exercise thereof.

Excludes tenant's option to purchase leased premises, see LANDLORD AND TENANT ¶92.

(.5). In general.

(1). Requisites and validity.

(2). Extension or renewal.

(3). Exercise.

(4). Revocation, rescission, or other termination.

19. Oral contracts.

20. Written contracts.

20.1. — In general.

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I. REQUISITES AND VALIDITY OF CONTRACT.(Cont'd)

21. — Form and contents.
22. — Description of property.
23. — Execution.
24. — Acknowledgment.
25. — Delivery.
26. — Recording and registration.
27. Bonds for title or to convey.
28. Contracts by correspondence.
29. Implied agreements.
30. Validity of assent in general.
31. Mistake.
32. Misrepresentation and fraud by vendor.
33. — In general.
34. — Quantity, boundaries, and location.
35. — Title, estate, or interest.
36. — Quality or value.
 - (1). In general.
 - (2). Quality or condition.
37. — Application of doctrine of caveat emptor.
 - (1). In general.
 - (2). Misrepresentation as to quantity, boundaries, or location.
 - (3). Misrepresentation as to title.
 - (4). Misrepresentation as to condition, quality, or value.
 - (5). Knowledge or intent of vendor.
 - (6). Materiality of misrepresentation.
 - (7). Silence or concealment.
38. Misrepresentation and fraud by purchaser.
39. Illegality.
41. Estoppel or waiver as to defects or objections.
42. — In general.
43. — Ratification of voidable contract.
 - (1). In general.
 - (2). Taking and holding possession.
44. Evidence.
45. Questions for jury.

II. CONSTRUCTION AND OPERATION OF CONTRACT.

46. Application of general rules of construction.
47. What law governs.
48. Place and time of making contract.
49. Provisions of written contracts in general.

II. CONSTRUCTION AND OPERATION OF CONTRACT.(Cont'd)

50. Construing instruments together.
51. Extrinsic circumstances.
52. Operation of contract in general.
53. Executory or executed contracts.
54. Effect of executory contract on title to property.
Equitable conversion, see EQUITABLE CONVERSION §109.
55. Entire or severable contracts.
56. Alternative stipulations.
57. Options.
58. Dependent or independent stipulations.
59. Construction as to parties.
60. Subject-matter.
- 60.1. — In general.
61. — Description of property in general.
62. — Description of estate or interest.
63. — Particular description.
64. — References to maps, plats, other instruments, or records.
65. — Quantity or extent of land.
 - (1). In general.
 - (2). Sale by the acre or in gross.
66. — After-acquired property.
67. — Appurtenances.
68. — Exceptions and reservations.
69. Purchase money.
- 69.1. — In general.
70. — Amount in general.
71. — Sale at price for tract or lot.
72. — Sale at price per acre or foot.
73. Place of performance and payment.
74. Time of performance and payment.
75. — In general.
76. — Concurrent acts.
77. — Term of credit, and deferred payments.
78. — Time as of the essence of the contract.
79. Conditions and provisos.
80. Evidence to aid construction.
81. Questions for jury.

III. MODIFICATION OR RESCISSION OF CONTRACT.

(A) BY AGREEMENT OF PARTIES.

82. Modification by subsequent agreement.
83. Merger in subsequent contract.

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**III. MODIFICATION OR RESCISSION
OF CONTRACT.(Cont'd)**

- 84. Option to rescind.
- 85. Agreement to rescind.
- 86. Abandonment of rights.
- 87. Operation and effect.

(B) RESCISSION BY VENDOR.

- 88. Right to rescind.
- 89. — In general.
- 90. — Invalidity of contract.
- 91. — Failure of consideration.
- 92. — Breach of covenant or condition in general.
- 93. — Nonpayment of purchase money.
- 94. — Insolvency of purchaser.
- 95. Estoppel or waiver.
 - (1). In general.
 - (2). Waiver of default in payment.
 - (3). Waiver after declaring forfeiture.
- 96. Conditions precedent.
- 97. — In general.
- 98. — Restoration of consideration.
- 99. Defenses or objections.
- 100. Time for rescission, and laches.
- 101. Election to rescind, and notice.
- 102. Acts constituting rescission.
- 103. Partial rescission.
- 104. Actions for rescission.
- 105. Operation and effect.
 - (1). In general.
 - (2). Payment for improvements.
 - (3). Liability for timber cut.
 - (4). Liability for rents and profits.

(C) RESCISSION BY PURCHASER.

- 106. Right to rescind.
- 107. — In general.
- 108. — Invalidity of contract.
- 109. — Failure of consideration.
- 110. — Breach of covenant or condition in general.
- 111. — Failure to convey.
- 112. — Defect in title of vendor.
 - (1). In general.
 - (2). Existence of mortgage.
- 113. — Defect in quantity or quality of land.
- 114. Estoppel or waiver.

**III. MODIFICATION OR RESCISSION
OF CONTRACT.(Cont'd)**

- 115. Conditions precedent.
- 116. — In general.
- 117. — Restoration of possession of land.
- 118. Defenses or objections.
- 119. Time for rescission, and laches.
- 120. Election to rescind, and notice.
- 121. Acts constituting rescission.
- 122. Partial rescission.
- 123. Actions for rescission.
- 124. Operation and effect.
- 125. — In general.
- 126. — Rents and profits.
- 127. — Improvements and expenditures.

IV. PERFORMANCE OF CONTRACT.

(A) TITLE AND ESTATE OF VENDOR.

- 128. Estate or title to be conveyed.
- 129. Sufficiency of title in general.
 - (1). In general.
 - (2). Defects in foreclosure proceedings.
 - (4). Title by descent or devise or sale in course of administration.
 - (5). Pendency of action and filing of lis pendens.
 - (6). Defects in prior conveyance.
- 130. Marketable title.
 - (.5). In general.
 - (1). Necessity.
 - (2). Requisites and sufficiency in general.
 - (3). Defects in foreclosure proceedings.
 - (4). Title by descent or devise or sale in course of administration.
 - (5). Pendency of litigation.
 - (6). Defects in prior conveyance.
 - (7). Title by adverse possession.
 - (8). Incumbrances and charges.
 - (9). Easements and encroachments.
- 131. Sufficiency of title by adverse possession.
- 132. Sufficiency of record title.
- 133. Particular requirements as to title.
- 134. Incumbrances, liens or charges.
 - (1). In general.
 - (2). Mortgages.
 - (3). Dower.

400. VENDOR AND PURCHASER

IV. PERFORMANCE OF CONTRACT.(Cont'd)

- (4). Building or other restrictions.
- 135. Easements and encroachments.
 - (1). In general.
 - (2). Encroachments on adjoining property or on street.
 - (3). Party wall.
- 136. Satisfaction of purchaser.
- 137. Approval of counsel or other person.
- 138. Knowledge by purchaser of defects.
- 140. Abstract of title.
- 141. Objections to title.
- 142. Effect of insufficiency.
- 143. Waiver of defects and objections.
- 144. Curing defects and perfecting title.
 - (1). In general.
 - (2). Time for curing defects.
 - (3). Security against defects.

(B) CONVEYANCE.

- 145. Obligation to convey in general.
- 146. Duty to prepare instrument.
- 147. Demand.
- 148. Tender.
- 149. Sufficiency.
- 149.1. — In general.
- 150. — Nature and form of instrument.
- 151. — Parties.
- 152. — Conformity to provisions of contract in general.
- 153. — Covenants.
- 154. — Conditions and restrictions.
- 155. Approval and acceptance.
- 156. Production and delivery of vendor's title deeds.
- 157. Delivery of possession of property.
- 158. Effect of conveyance on contract.
- 159. Effect of default or delay.

(C) QUANTITY OF LAND AND APPURTENANCES.

- 160. Conformity to description in contract in general.
- 161. Specific quantity or measurement.
- 162. Appurtenances.
- 163. Surveys.
- 164. Effect of excess.
- 165. Effect of deficiency.
- 166. Waiver of objections.

IV. PERFORMANCE OF CONTRACT.(Cont'd)

- 167. Curing or supplying deficiency or other variance from contract.

(D) PAYMENT OF PURCHASE MONEY.

- 168. Obligation to pay in general.
- 169. Demand.
- 170. Tender.
- 172. Interest and expenses.
- 173. Abatement or deductions.
- 174. — In general.
- 175. — Defect in title.
- 176. — Deficiency in quantity of land.
- 177. — Waiver of right.
- 178. Mode and sufficiency of payment.
- 179. — In general.
- 180. — Notes or other obligations, and payment thereof.
- 181. — Assumption and payment of incumbrances or other liabilities.
- 182. Installments and deferred payments.
- 183. Liabilities of joint purchasers, and contribution.
- 184. Effect of payment.
- 185. Effect of default or delay.
- 186. Excuses for default or delay.
- 187. Waiver of default or delay.

V. RIGHTS AND LIABILITIES OF PARTIES.

(A) AS TO EACH OTHER.

- 188. Nature of the relation.
- 189. Estoppel of purchaser to deny title of vendor.
- 190. Acquisition or assertion of adverse title or claim.
- 191. Possession or control of property.
- 192. Enjoyment and use of property in general.
- 193. Trees and timber.
- 194. Crops and emblements.
- 196. Rents and profits.
- 197. Incumbrances.
- 198. Taxes and assessments.
- 199. Insurance.
- 200. Repairs.
- 201. Improvements.
- 202. Expenses and losses.
- 203. Injuries to property.

400. VENDOR AND PURCHASER

V. RIGHTS AND LIABILITIES OF PARTIES.(Cont'd)

- 204. Dealings and transactions between parties.
- 205. Rights and liabilities of joint vendors as to each other.
- 206. Rights and liabilities of joint purchasers as to each other.
- 207. Assignment or other transfer of contract by purchaser.
- 208. Conveyance of property or transfer of interest by vendor.
- 209. Reconveyance by purchaser to vendor.

(B) AS TO THIRD PERSONS IN GENERAL.

- 210. Title as against third persons.
- 211. Incumbrances and charges on property before contract.
- 212. Subsequent purchasers from vendor.
- 213. Creditors of vendor.
 - (1). In general.
 - (2). Attachment.
 - (3). Execution.
- 214. Assignees of contract or bond for title.
 - (1). In general.
 - (2). Right to assign contract or bond.
 - (3). Mode and sufficiency of assignment.
 - (4). Assignment for security.
 - (5). Liabilities of vendor or assignor.
 - (6). Liabilities of assignee.
- 215. Purchasers from purchaser.
- 216. Creditors of purchaser.
- 217. Contracts relating to property.
- 218. Trespass or other injuries to property by third persons.
- 219. Actions between vendor or purchaser and third persons.

(C) BONA FIDE PURCHASERS.

- 220. Nature and grounds of protection in general.
- 221. Statutory provisions.
- 222. Mode and form of conveyance.
- 223. — In general.
- 224. — Quitclaim.
- 225. Notice.
- 226. — In general.
 - (1). In general.
 - (2). Time of notice.

V. RIGHTS AND LIABILITIES OF PARTIES.(Cont'd)

- 227. — Actual notice.
- 228. — Effect of notice.
 - (1). In general.
 - (2). Prior contract of sale or conveyance by vendor in general.
 - (3). Unrecorded or defectively recorded instrument in general.
 - (4). Void or defective sale or conveyance.
 - (5). Fraud and mistake.
 - (7). Incumbrance or lien.
- 229. — Constructive notice, and facts putting on inquiry.
 - (1). In general.
 - (2). Unrecorded instrument.
 - (3). Fraud and invalidity of instruments.
 - (4). Existence of will and rights thereunder.
 - (5). Lien or incumbrance and extent thereof.
 - (6). Actions and other proceedings and judgments or decrees.
 - (8). Streets and alleys.
 - (9). Grants to railroads.
 - (10). Knowledge or notice to others.
 - (11). Capacity in which notice is received.
- 230. — Recitals in conveyance.
 - (1). In general.
 - (2). Unrecorded instruments.
 - (3). Lien, charge, or incumbrance.
 - (4). Relation of vendor to former owner.
 - (5). Restrictions and conditions.
- 231. — Records.
 - (1). In general.
 - (2). Necessity and effect of searching records.
 - (3). Facts of which record is notice.
 - (4). Persons affected with notice and notice of instruments not in chain of title.
 - (5). Record as notice of unrecorded instrument.
 - (6). Defective records and requisites of records.
 - (7). Filing as record.

400. VENDOR AND PURCHASER

V. RIGHTS AND LIABILITIES OF PARTIES.(Cont'd)

- (8). Destruction or withdrawal of records.
- (9). Place of record.
- (10). Time of recording and relation back to delivery.
- (11). Priority between recorded instruments.
- (12). Index to record.
- (13). Instruments not entitled to record or required to be recorded in general.
- (14). Void and defective instruments.
- (14.1). — In general.
- (15). — Absence of or defect in acknowledgment or proof.
- (16). Particular instruments or proceedings.
- (16.1). — In general.
- (17). — Mortgages and other liens or incumbrances.
- 232. — Possession.
 - (1). In general.
 - (2). Requisites and sufficiency of possession.
 - (3). Notice of possession.
 - (4). Extent of possession.
 - (5). Prior vendor.
 - (7). Prior purchasers in general.
 - (8). Possession under unrecorded instrument.
 - (9). By tenant.
 - (10). By tenant in common.
 - (11). Joint possession of vendor and others.
 - (12). By husband and wife.
 - (13). By parent and child.
- 233. Failure to record deed or other instrument.
- 234. Consideration.
- 235. — In general.
- 236. — Payment of value.
- 237. — Pre-existing debt.
- 238. Purchasers from bona fide purchaser.
- 239. Title and rights acquired by bona fide purchasers and equities and defenses against them.
 - (1). In general.

V. RIGHTS AND LIABILITIES OF PARTIES.(Cont'd)

- (2). Protection against prior contract of sale.
- (3). Effect of sale under execution against vendor.
- (4). Protection from liens and incumbrances.
- (5). Right to timber and fixtures.
- (6). Protection of purchaser of legal title.
- (7). Title as against prior deed of gift.
- (8). Effect of notice to vendor in general.
- (9). Protection against fraud or other invalidity in prior conveyances.
- 240. Pleading purchase in good faith.
- 241. Evidence as to purchase in good faith.
- 241.1. — In general.
- 242. — Presumptions and burden of proof.
- 243. — Admissibility.
- 244. — Weight and sufficiency.
- 245. Questions for jury.

VI. REMEDIES OF VENDOR.

(A) LIEN AND RECOVERY OF LAND.

- 246. Nature of lien in general.
- 247. What law governs.
- 248. Statutory provisions.
- 249. Claims which may be secured by lien.
- 250. Property, estate or interest which may be subject to lien.
- 251. Creation of lien in general.
- 252. Title retained by vendor under provisions of contract.
- 253. Lien reserved in contract or conveyance.
- 254. Equitable lien.
 - (1). In general.
 - (2). Conveyance.
 - (3). Contract of sale or bond for deed.
 - (4). Price or consideration and mode or medium of payment.
 - (5). Conveyance to third person at purchaser's request.
- 255. Statutory liens.
- 256. Proceedings to perfect lien.
- 257. Operation and effect of lien in general.
- 258. Amount and extent of lien.
- 259. Property or interest subject to lien.

400. VENDOR AND PURCHASER

VI. REMEDIES OF VENDOR.(Cont'd)

- 260. Priority of lien.
 - (1). In general.
 - (2). As to liens acquired by legal proceedings.
 - (3). Amount of lien as against junior lienholder.
- 261. Assignment of lien or claim for purchase money.
 - (1). In general.
 - (2). Assignment of claim or obligation for purchase money as assignment of lien.
 - (3). Rights and liabilities of parties in general.
 - (4). Bona fide purchasers.
 - (5). Priorities.
 - (6). Assignment as transfer or extinguishment of vendor's title.
- 262. Transfer of property by purchaser.
- 263. — In general.
- 264. — Liabilities of purchaser after transfer.
- 265. — Rights and liabilities of subsequent purchasers.
 - (1). In general.
 - (2). Bona fide purchasers.
 - (3). Assumption of lien and personal liability.
 - (4). Rights as against assignee of purchase-money notes.
 - (5). Transfers of separate parcels to different persons.
- 266. Waiver, loss, or discharge of lien.
 - (1). In general.
 - (2). Rescission or repudiation of sale.
 - (3). Conveyance of property by grantor.
 - (4). Death of purchaser.
 - (5). Blending consideration with other demands.
 - (6). Taking note or other obligation from purchaser and renewal thereof.
 - (7). Action on obligation secured.
 - (8). Taking other security and enforcement thereof.
 - (9). As to subsequent purchasers.
 - (10). Transfers of claim or obligation for purchase money.

VI. REMEDIES OF VENDOR.(Cont'd)

- 267. Payment, release, or satisfaction of lien.
- 268. Enforcement of lien.
- 268.1. — In general.
- 269. — Nature and form of remedy.
- 270. — Grounds for enforcement.
- 272. — Restraining enforcement.
- 273. — Conditions precedent.
- 274. — Defenses.
 - (1). In general.
 - (2). Defect in title of vendor.
 - (3). Set-off and counterclaim.
- 275. — Persons entitled to enforce.
- 276. — Persons entitled to contest.
- 277. — Jurisdiction and venue.
- 278. — Time to sue, limitations, and laches.
See also LIMITATION OF ACTIONS.
- 279. — Parties.
- 280. — Pleading.
 - (.5). In general.
 - (1). Bill, petition, or complaint.
 - (2). Plea or answer and subsequent pleadings.
 - (3). Issues, proof, and variance.
- 281. — Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency.
- 282. — Injunction.
- 283. — Receiver.
- 284. — Trial or hearing.
- 285. — Judgment or decree.
 - (1). In general.
 - (2). Rendition, form, and requisites.
 - (3). Scope and extent of relief in general.
 - (4). Sale of property and disposition of proceeds.
 - (5). Amount of judgment.
- 286. — Execution and enforcement of judgment in general.
- 287. — Sale.
- 288. — Title and rights of purchaser at sale.
- 289. — Redemption from sale.
- 291. — Deficiency and personal liability.

400. VENDOR AND PURCHASER

VI. REMEDIES OF VENDOR.(Cont'd)

- 292. — Proceeds and surplus.
- 293. — Review.
- 294. — Fees and costs.
- 295. — Operation and effect.
- 296. Right to recover possession in general.
- 297. Re-entry and possession of vendor.
- 298. Summary remedies for recovery of possession.
- 299. Actions for recovery of possession.
 - (1). In general.
 - (2). Conditions precedent.
 - (3). Pleading and evidence.
 - (4). Trial and judgment and enforcement thereof.
- 300. Operation and effect of recovery of land.

(B) ACTIONS FOR PURCHASE MONEY.

- 301. Nature and form.
- 302. Right of action.
- 303. Conditions precedent.
- 304. Defenses.
- 305. — In general.
- 306. — Invalidity of contract.
- 307. — Breach of covenant or condition in general.
- 308. — Defect in title of vendor.
 - (1). In general.
 - (2). Character of defect in general.
 - (3). Incumbrances.
 - (4). Partial failure of title.
 - (5). Conditions precedent to raising defense.
 - (6). Right of purchaser under deed without covenants to raise defense.
 - (7). Right of purchaser under warranty deed to raise defense.
 - (8). Right of purchaser in possession to raise objection.
 - (9). Right to raise defense as dependent on solvency of vendor.
 - (10). Right to defense after selling property.
 - (11). Prior transfer by vendor.
- 309. — Defect in quantity or quality of land.
- 310. — Set-off and counterclaim.
- 312. Time to sue and limitations.
See also LIMITATION OF ACTIONS.

VI. REMEDIES OF VENDOR.(Cont'd)

- 313. Parties.
- 314. Pleading.
 - (.5). In general.
 - (1). Petition, complaint, or bill.
 - (2). Plea or answer, affidavit of defense, and subsequent pleadings.
 - (3). Issues, proof, and variance.
- 315. Evidence.
 - (.5). In general.
 - (1). Presumptions and burden of proof.
 - (2). Admissibility.
 - (3). Weight and sufficiency.
- 316. Amount of recovery.
- 317. Trial.
- 318. Judgment and execution.
- 320. Costs.

(C) ACTIONS FOR DAMAGES.

- 321. Nature and form.
- 322. Right of action.
- 323. Conditions precedent.
- 324. Defenses.
- 327. Parties.
- 328. Pleading.
- 329. Evidence.
- 330. Damages.
- 331. Trial.

VII. REMEDIES OF PURCHASER.

(A) RECOVERY OF PURCHASE MONEY PAID.

- 334. Grounds for recovery of payments.
 - (1). In general.
 - (2). Misrepresentation and fraud of vendor.
 - (3). Rescission by agreement.
 - (4). Rescission by vendor.
 - (5). Defect in title of vendor.
 - (6). Failure or refusal to convey.
 - (7). Overpayment.
- 335. Effect of delay or default in performance by purchaser.
- 336. Waiver of right.
- 337. Lien for purchase money and value of improvements and enforcement thereof.
- 338. Nature and form of action.

401. VENUE

VII. REMEDIES OF PURCHASER.(Cont'd)

- 339. Conditions precedent.
- 340. Defenses.
- 341. Proceedings.
 - (.5). In general.
 - (1). Time to sue, limitations, and laches.

See also LIMITATION OF ACTIONS.

 - (1.5). Persons liable and parties.
 - (2). Pleading.
 - (3). Evidence.
 - (4). Trial.
 - (5). Amount and items of recovery.
 - (6). Judgment.

(B) ACTIONS FOR BREACH OF CONTRACT.

- 342. Nature and form.
- 343. Right of action.
 - (1). In general.
 - (2). Deficiency in quantity of land.
 - (3). Defect in title of vendor.
 - (4). Failure or refusal to convey.
- 344. Conditions precedent.
- 345. Defenses.
- 346. Jurisdiction and venue.
- 347. Time to sue and limitations.

See also LIMITATION OF ACTIONS.
- 348. Parties.
- 349. Pleading.
- 350. Evidence.
- 351. Damages.
 - (1). In general.
 - (2). Value of land in general.
 - (3). Value of land at time of breach.
 - (4). Value of land at time of breach and interest.
 - (5). Value of land less unpaid purchase money.
 - (6). Damages for deficiency or partial failure of title.
 - (7). Improvements.
 - (8). Damages for loss of bargain.
 - (9). Nominal damages.
 - (10). Interest on damages.
- 352. Trial.
- 353. Judgment and execution.

401. VENUE

SUBJECTS INCLUDED

Place in which actions should be brought and tried in general
Distinctions in respect thereof between local and transitory actions
Grounds for change of venue or place of trial, proceedings therefor, and effect of such change

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Corporations, venue of actions by or against, see CORPORATIONS AND BUSINESS ORGANIZATIONS and specific topics relating to particular classes of corporations
Criminal prosecutions, venue of, see CRIMINAL LAW
Federal courts, district in which action should be brought or tried, see FEDERAL COURTS and specific topics
Particular forms or classes of actions, venue of, see QUIETING TITLE and other specific topics
Plea of privilege, or plea in abatement raising objections to venue, and proceedings thereon, see PLEADING
Proceedings other than actions, place of bringing, see HABEAS CORPUS and specific topics relating to other special proceedings

- I. NATURE OR SUBJECT OF ACTION, ¶15-17.
- II. DOMICILE OR RESIDENCE OF PARTIES, ¶18-32.
- III. CHANGE OF VENUE OR PLACE OF TRIAL, ¶33-84.

I. NATURE OR SUBJECT OF ACTION.

- 1.5. Nature and necessity of venue in action.
- 2. Place in which action may be brought or tried in general.
- 3. Constitutional and statutory provisions.
- 4. Local or transitory nature of action in general.
- 5. Actions relating to real property.
 - 5.1. — In general.
 - 5.2. — Actions for sale or enforcement of liens and of debts which may become charges on land.

401. VENUE

I. NATURE OR SUBJECT OF ACTION.(Cont'd)

- 5.3. — Recovery of real estate or determination of interest therein.
 - (1). In general.
 - (2). Particular actions.
 - (2.1). — In general.
 - (3). — Ejectment.
 - (4). — Partition.
 - (5). — Quieting title; removal of cloud on title.
 - (6). — Specific performance.
 - (7). — Trespass to try title.
 - (8). — Leases and mineral interests, actions involving.
- 5.4. — Setting aside conveyances, assignments, incumbrances, judgment, liens, etc.
- 5.5. — Injuries to real property.
- 6. Actions relating to personal property.
- 7. Actions on contracts.
 - (5). In general.
 - (1). Transitory character in general.
 - (2). Particular contracts or actions.
 - (3). Place of making.
 - (4). Place of performance or payment.
 - (4.1). — In general.
 - (5). — Particular contracts or actions.
 - (6). — Bills, notes, or bonds.
 - (7). — Sales.
 - (8). — Services.
- 7.5. — Contracts in writing.
 - (1). In general.
 - (2). Designation of place of performance.
 - (3). Particular contracts or actions.
 - (3.1). — In general.
 - (4). — Bills, notes, and mortgages.
 - (5). — Land contracts.
 - (6). — Leases and rental contracts.
 - (7). — Sales.
 - (8). — Services.
- 8. Actions for torts.
 - 8.1. — In general.
 - 8.2. — Particular torts.
 - 8.5. — Exceptions in Texas venue statute.
 - (1). In general.
 - (2). Fraud.
 - (3). Crime or offense in general.

I. NATURE OR SUBJECT OF ACTION.(Cont'd)

- (5). Trespass in general.
- (6). Negligence as trespass.
- (7). Conversion.
- (8). Negligence.
- 9. Actions for penalties or forfeitures.
- 10. Actions by or against parties in representative capacity.
- 11. Actions against public officers and others for official acts.
- 12. Actions arising out of the jurisdiction.
- 13. Situation of subject of action.
- 14. Place of accrual of cause of action.
- 15. Ancillary and incidental actions and proceedings.
- 16. Right to sue in more than one county or district, and election.
- 16.5. Joinder of causes of action suable in different counties.
- 17. Objections and exceptions, estoppel, and waiver.
- II. DOMICILE OR RESIDENCE OF PARTIES.**
- 18. Place in which party may sue or be sued in general.
- 19. Constitutional and statutory provisions.
- 20. Privileges of defendants.
- 21. — In general.
- 22. — Codefendants.
 - (1). In general; joint or related causes of action.
 - (2). Makers or principals and indorsers or sureties.
 - (3). Materiality of resident defendant in general.
 - (4). Necessary or proper parties.
 - (5). Dismissal of, or failure to recover against, resident defendant.
 - (6). Particular actions, application to.
 - (7). Particular classes of parties, application to.
 - (7.1). — In general.
 - (8). — Corporations, stockholders, and officers.
 - (9). — Public officers or entities.
 - (10). Cross defendants or new parties.
- 23. Rights of plaintiffs.
- 24. — In general.
- 25. — Coplaintiffs.
- 26. Actions by or against nonresidents.
- 27. Effect of assignment of cause of action.

402. WAR AND NATIONAL EMERGENCY

II. DOMICILE OR RESIDENCE OF PARTIES.(Cont'd)

- 28. Domicile or residence for purpose of action.
- 29. Place of business, office, or agency.
- 30. Place where party is found or process served.
- 31. Right to sue in more than one county or district, and election.
- 32. Objections and exceptions, estoppel, and waiver.
 - (1). In general.
 - (2). Estoppel and waiver.

III. CHANGE OF VENUE OR PLACE OF TRIAL.

- 33. Power and duty of court in general.
- 34. Constitutional and statutory provisions.
- 36. Causes in which change may be granted.
- 37. Condition of cause.
- 38. Right of plaintiff to change.
- 39. Right of defendant to change.
- 40. — In general.
- 41. — Codefendants.
- 42. Discretion of court.
- 43. Successive applications.
- 44. Stipulations and agreements.
- 45. Grounds for change in general.
- 46. Action not brought in proper county or district.
- 47. Alteration of county or district pending action.
- 48. Change of domicile or residence of party pending action.
- 49. Disqualification or prejudice of judge.
 - (1). In general.
 - (2). Former employment or consultation as attorney or counsel.
- 50. Local prejudice.
- 51. Promotion of justice.
- 52. Convenience.
 - (1). In general.
 - (2). Officers and employees of party.
 - (3). Expert witnesses.
 - (4). Competency and materiality of testimony.
 - (5). Condition of calendar in county to which removal is sought.
- 52.5. Grounds for objection to change.
- 53. Admissions to prevent change.
- 54. Mode of effecting change in general.

III. CHANGE OF VENUE OR PLACE OF TRIAL.(Cont'd)

- 55. Change by amendment of pleadings and effect of amendment.
- 56. Demand for change, and consent or refusal.
- 57. Change on court's own motion.
- 58. Form and requisites of application in general.
- 59. Persons entitled to apply.
- 60. Jurisdiction of application.
- 61. Time for application.
- 62. Parties on application.
- 63. Notice of application.
- 64. Affidavits for change.
 - 64.1. — In general.
 - 65. — Necessity.
 - 66.5. — Requisites and grounds.
- 68. Counter affidavits and other evidence.
- 69. Counter application for retention of cause.
- 70. Conclusiveness and effect of affidavits and other proofs.
- 71. Effect of pending application.
- 72. Hearing and determination.
- 73. Conditions on granting or refusing change.
- 74. County or district to which change may be made.
- 75. Order granting or refusing change.
- 76. Vacating or setting aside order.
- 77. Waiver of change.
- 78. Operation and effect of order.
- 79. Transmission of record or transcript.
- 80. Jurisdiction and proceedings after change.
- 81. Remand.
- 82. Second or subsequent change.
- 83. Jurisdiction and proceedings after refusal.
- 84. Objections and exceptions, estoppel, and waiver.

402. WAR AND NATIONAL EMERGENCY

SUBJECTS INCLUDED

Armed contests between nations or states

402. WAR AND NATIONAL EMERGENCY

Such contests within a nation or state which prevent the regular administration of the laws by the civil authorities

Power to make war and peace, and commencement and termination of hostilities

Effect of existence of war and of martial law on civil rights, liabilities, and remedies

Rights of belligerents and of neutrals in general

Prosecution of war and exercise of war powers in general

Embargo and nonintercourse acts, blockades, contraband goods, illegal trading, captures and prizes, confiscation and sequestration of enemies' property

Military occupation and conquest of enemies' territory

Martial law and administration thereof by courts-martial, military commissions, and other tribunals

Peacetime national emergency and exercise of powers therein

Particular measures and acts in exercise of war and emergency powers, such as mobilization for war, protection against subversive activities, detention of enemy combatants, price control, rent and housing regulation, rationing, control of petroleum products, labor and wage control, and foreign trade restrictions

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Insurrection, rebellion, etc., as offenses, and suppression thereof by civil authority, see INSURRECTION AND SEDITION

Statutes of limitations, suspension of running of, see LIMITATION OF ACTIONS

Courts martial for members of armed forces, see MILITARY JUSTICE

Neutrality laws, violations of, see NEUTRALITY LAWS

Treason by levying war, etc., see TREASON

Claims against United States for losses in war, see UNITED STATES

Disaster aid, see UNITED STATES

I. IN GENERAL, ⚭1000-1099.

(A) WAR IN GENERAL, ⚭1000-1010.

(B) STATUS AND RIGHTS OF PERSONS DURING WAR, ⚭1011-1018.

I. IN GENERAL—Cont'd

(C) EFFECT OF WAR ON PREEXISTING CONTRACTS AND TRADE, ⚭1019-1023.

(D) EFFECT OF WAR ON ACTIONS AND REMEDIES, ⚭1024-1025.

(E) COMMERCIAL INTERCOURSE WITH ENEMY, ⚭1026-1030.

(F) REQUISITION OR SEIZURE OF PROPERTY, ⚭1031-1054.

1. REQUISITION OF PROPERTY, ⚭1031-1037.

2. PROPERTY OF ENEMIES, ⚭1038-1044.

3. TRADING WITH THE ENEMY RESTRICTIONS, ⚭1045-1054.

(G) WAR AT SEA, ⚭1055-1081.

1. BLOCKADE, ⚭1055-1058.

2. CAPTURE AT SEA, ⚭1059-1071.

3. PRIZE PROCEEDINGS, ⚭1072-1081.

(H) MILITARY CONTROL OF ENEMY TERRITORY, ⚭1082-1096.

1. MILITARY OCCUPATION AND CONQUEST OF TERRITORY, ⚭1082-1087.

2. MARTIAL LAW, ⚭1088-1094.

3. COURTS-MARTIAL AND MILITARY TRIBUNALS, ⚭1095-1096.

(I) PEACE, ⚭1097-1099.

II. MEASURES AND ACTS IN EXERCISE OF FEDERAL POWER, ⚭1100-1338.

(A) IN GENERAL, ⚭1100-1109.

(B) PARTICULAR MEASURES, ORDERS, AND REGULATIONS, ⚭1110-1338.

1. MOBILIZATION FOR WAR, ⚭1110-1121.

2. PROTECTION AGAINST SUBVERSIVE ACTIVITIES, ⚭1122-1136.

3. ALIENS AND ENEMY COMBATANTS, ⚭1137-1144.

4. PRICE CONTROL, ⚭1145-1223.

5. RENTS AND HOUSING, ⚭1224-1268.

6. ALLOCATION AND RATIONING OF COMMODITIES AND SERVICES, ⚭1269-1285.

7. CONTROL AND RATIONING OF PETROLEUM PRODUCTS, ⚭1286-1316.

8. LABOR AND WAGE CONTROL, ⚭1317-1322.

402. WAR AND NATIONAL EMERGENCY

**II. MEASURES AND ACTS IN EXERCISE
OF FEDERAL POWER—Cont'd**

**(B) PARTICULAR MEASURES, OR-
DERS, AND REGULATIONS
—Cont'd**

**9. FOREIGN TRADE RESTRIC-
TIONS, Ⓔ1323–1338.**

**III. STATE SUPPLEMENTARY MEAS-
URES, Ⓔ1339–1351.**

I. IN GENERAL.

(A) WAR IN GENERAL.

- 1000. Nature and incidents in general.
- 1001. Power to make war.
- 1002. Commencement.
- 1003. Recognition of existence of state of war.
- 1004. Civil war.
- 1005. Prosecution of war.
- 1006. Neutrality of nations in general.
- 1007. Liabilities for exercise of war powers.
- 1008. — In general.
- 1009. — Immunity.
- 1010. — War crimes in general.

**(B) STATUS AND RIGHTS OF
PERSONS DURING WAR.**

- 1011. In general.
- 1012. Effect of war on civil rights in general.
- 1013. United States citizens.
- 1014. Neutrals and neutrality in general.
- 1015. Subjects of enemy nations in general.
- 1016. War crimes against civilian noncombatants.
- 1017. Prisoners of war.
- 1018. Enemy combatants.

**(C) EFFECT OF WAR ON PREEXISTING
CONTRACTS AND TRADE.**

- 1019. In general.
- 1020. Contracts of agency and partnership.
- 1021. Insurance contracts.
- 1022. Contracts of sale.
- 1023. Bills and notes.

(D) EFFECT OF WAR ON ACTIONS AND REMEDIES.

- 1024. Rights of action.
- 1025. Capacity to sue or be sued.

(E) COMMERCIAL INTERCOURSE WITH ENEMY.

- 1026. In general.

I. IN GENERAL.(Cont'd)

- 1027. Constitutional and statutory provisions.
- 1028. Contracting with enemy subjects.
- 1029. Seizure and forfeiture of citizen's property.
- 1030. Commerce with neutrals.

(F) REQUISITION OR SEIZURE OF PROPERTY.

1. REQUISITION OF PROPERTY.

- 1031. Contributions and requisitions in general.
- 1032. Property of neutrals.
- 1033. Seizure of contraband.
- 1034. Compensation for property taken.
- 1035. — In general.
- 1036. — Amount and sufficiency.
- 1037. — Proceedings.

2. PROPERTY OF ENEMIES.

- 1038. Rights of war as to enemy's property in general.
- 1039. Constitutional and statutory provisions.
- 1040. Capture of property on land.
- 1041. Statutory confiscation proceedings.
- 1042. Disposition of captured or abandoned property.
- 1043. Recapture and restoration to owner of property.
- 1044. War crimes against property.

3. TRADING WITH THE ENEMY RESTRICTIONS.

- 1045. In general.
- 1046. Constitutional and statutory provisions.
- 1047. Designation of enemies.
- 1048. Vesting order; determination of enemy character of property.
- 1049. Freezing and blocking orders.
- 1050. Proceedings of Alien Property Custodian.
- 1051. Claims against property in hands of Alien Property Custodian.
- 1052. Unblocking license.
- 1053. Return of property.
- 1054. Criminal responsibility.

(G) WAR AT SEA.

1. BLOCKADE.

- 1055. Establishment and duration.

402. WAR AND NATIONAL EMERGENCY

I. IN GENERAL.(Cont'd)

- 1056. Notice.
- 1057. Violation; penalty.

2. CAPTURE AT SEA.

- 1059. In general.
- 1060. Visit and search of neutral vessels.
- 1061. Property subject to capture.
- 1062. — In general.
- 1063. — Vessels of United States and goods.
- 1064. — Enemy vessels and goods.
- 1065. — Neutral vessels and goods.
- 1066. — Contraband.
- 1067. — Exemptions.
- 1068. Duties and liabilities of captors.
- 1069. Duties and liabilities of neutrals.
- 1070. Effect of capture on title, lien, or other claim.
- 1071. Recapture and restoration to owner of vessel.

3. PRIZE PROCEEDINGS.

- 1072. In general.
- 1073. Jurisdiction and venue.
- 1074. Parties, process, and pleadings.
- 1075. Evidence and hearing.
- 1076. Adjudication or decree.
- 1077. Appropriation or sale of property.
- 1078. Restitution or compensation to owners.
- 1079. Costs and fees.
- 1080. Prize money.
- 1081. Review.

(H) MILITARY CONTROL OF ENEMY TERRITORY.

1. MILITARY OCCUPATION AND CONQUEST OF TERRITORY.

- 1082. In general.
- 1083. Effect of occupation.
- 1084. Military government.
- 1085. Collection of taxes and duties.
- 1086. Establishment of courts of justice.
- 1087. Liabilities of members of occupying forces.

2. MARTIAL LAW.

- 1088. In general.
- 1089. Preconditions for martial law.

I. IN GENERAL.(Cont'd)

- 1090. Declaration or institution of martial law.
- 1091. Qualified or modified martial law.
- 1092. Scope and extent of powers.
- 1093. Authority of the military over civilians.
- 1094. Enforcement.

3. COURTS-MARTIAL AND MILITARY TRIBUNALS.

- 1095. In general.
- 1096. Court of Military Commission Review proceedings.

(I) PEACE.

- 1097. In general.
- 1098. Termination of war.
- 1099. Operation and effect of treaties of peace.

II. MEASURES AND ACTS IN EXERCISE OF FEDERAL POWER.

(A) IN GENERAL.

- 1100. In general.
- 1101. Constitutional and statutory provisions.
- 1102. Executive powers in general.
- 1103. Administrative agencies and proceedings.
- 1104. Orders and regulations in general.
- 1105. Judicial supervision in general.
- 1106. Effect of precautionary acts on rights and liabilities.
- 1107. — In general.
- 1108. — Contracts.
- 1109. — Leases.

(B) PARTICULAR MEASURES, ORDERS, AND REGULATIONS.

1. MOBILIZATION FOR WAR.

- 1110. In general.
- 1111. Manufacture and procurement of war materials.
- 1112. — In general.
- 1113. — Conversion to war production.
- 1114. — Seizure or control of private business.
- 1115. — Excess profits on government contracts.
- 1116. Restrictions on aid to other nations.
- 1117. Control of communications.

402. WAR AND NATIONAL EMERGENCY

II. MEASURES AND ACTS IN EXERCISE
OF FEDERAL POWER.(Cont'd)

- 1118. Protections of property and welfare of citizens.
- 1119. Welfare of armed forces.
- 1120. Food administration.
- 1121. Sale or disposition of government property.

2. PROTECTION AGAINST SUBVERSIVE ACTIVITIES.

- 1122. In general.
- 1123. Constitutional and statutory provisions.
- 1124. Regulation of military areas.
- 1125. Espionage.
- 1126. Sabotage.
- 1127. Regulation of subversive organizations.
- 1128. Anti-terrorism measures.
- 1129. — In general.
- 1130. — Designation of foreign terrorist organization.
- 1131. — Crimes and criminal prosecutions.
- 1132. — Private remedies.
 - (1). In general.
 - (2). What law governs.
- 1133. Foreign intelligence surveillance.
Establishment and organization of Foreign Intelligence Surveillance Court, see FEDERAL COURTS §2005.
- 1134. Access to secrets or classified information; security clearances.
- 1134.5. — In general.
- 1135. — Power to restrict access.
- 1136. — Security clearance proceedings.

3. ALIENS AND ENEMY COMBATANTS.

- 1137. Restrictive measures in general.
- 1139. Exclusion and internment of nationals of enemy ancestry.
- 1140. Detention of enemy combatants; military commissions.
- 1141. — In general.
- 1142. — Validity of continued detention.
- 1143. — Proceedings.
- 1144. — Review.

4. PRICE CONTROL.

- 1145. In general.
- 1146. Constitutional and statutory provisions.
- 1147. — In general.
- 1148. — Validity.
- 1149. Power to regulate prices.

II. MEASURES AND ACTS IN EXERCISE
OF FEDERAL POWER.(Cont'd)

- 1150. Commodities or service subject to regulation.
- 1151. Persons or agencies subject to regulation.
- 1152. Administration of price control.
- 1153. Orders and regulations in general.
- 1154. Validity or orders and regulations.
- 1155. — In general.
- 1156. — Arbitrary or unreasonable regulations.
- 1157. — Discrimination.
- 1158. — Individual hardship.
- 1159. — Regulations beyond scope of price control.
- 1160. — Insufficient standards.
- 1161. — Presumptions and burden of proof.
- 1162. Change in regulation, order, or interpretation.
- 1163. Construction and operation of regulations.
- 1164. Violation of regulations.
- 1165. Responsibility of dealer for acts of agents and employees.
- 1166. Defenses.
- 1167. Establishment of prices.
- 1168. — In general.
- 1169. — Factors governing determination.
- 1170. — Adjustment.
- 1171. Regulations supplementary to price ceilings.
- 1172. Common carrier rates.
- 1173. Public utility rates.
- 1174. Subsidies.
- 1175. Restrictions of margins and profits.
- 1176. Licenses and permits.
- 1177. Objections to orders, regulations, and prices.
- 1178. Review of orders and regulations.
- 1179. — In general.
- 1180. — Matters reviewable.
- 1181. — Presentation of grounds in prior proceeding.
- 1182. — Scope of review.
- 1183. — Proceedings on review.
- 1184. Enforcement of price controls in general.
- 1185. Suspension of right to operate.

402. WAR AND NATIONAL EMERGENCY

II. MEASURES AND ACTS IN EXERCISE OF FEDERAL POWER.(Cont'd)

- 1186. Investigation, inspection, and discovery.
- 1187. Injunction against violation of price controls.
- 1188. — In general.
- 1189. — Grounds.
- 1190. — Violations that may be enjoined.
- 1191. — Discretion in issuing injunction.
- 1192. — Effect of discontinuance of violation.
- 1193. — Proceedings for injunction in general.
- 1194. — Preliminary injunction.
- 1195. — Evidence.
- 1196. — Order or decree.
- 1197. — Review.
- 1198. — Violation of injunction.
- 1199. Actions to recover overcharges and penalties.
- 1200. — In general.
- 1201. — Persons entitled to sue.
- 1202. — Pleading.
- 1203. — Evidence.
- 1204. — Questions of fact.
- 1205. — Trial.
- 1206. — Damages in general.
- 1207. — Effect of willfulness and precautions taken.
- 1208. — Extent of recovery.
- 1209. — Costs and fees.
- 1210. — Review.
- 1211. Injunction against enforcement of price controls.
- 1212. Effect of established price on rights and liabilities.
- 1213. — In general.
- 1214. — Damages.
- 1215. — Contracts.
- 1216. Offenses against price controls.
- 1217. — In general.
- 1218. — Defenses.
- 1219. — Indictment, information, or complaint.
- 1220. — Evidence.
- 1221. — Questions of fact.
- 1222. — Trial.
- 1223. — Review.

5. RENTS AND HOUSING.

- 1224. In general.
- 1225. Constitutional and statutory provisions.
- 1226. Power to regulate.
- 1227. Property subject to regulation.
- 1228. Persons and agencies subject to regulation.
- 1229. Administration of rent and housing controls.
- 1230. Orders and regulations in general.
- 1231. Establishment of authorized rents.
- 1232. Amount of rent in general.
- 1233. Maintenance of services by landlord.
- 1234. Adjustment of rents.
- 1235. Review of orders and regulations.
- 1236. Enforcement of rent orders and regulations.
- 1237. Investigation and inspection.
- 1238. Actions to recover overcharges and penalties.
- 1239. — In general.
- 1240. — Defenses.
- 1241. — Time to sue and limitations.
- 1242. — Pleading.
- 1243. — Evidence.
- 1244. — Questions of fact.
- 1245. — Relief.
- 1246. — Costs and fees.
- 1247. Injunction against violation of regulations.
- 1248. — In general.
- 1249. — Proceedings.
- 1250. — Violation of injunction.
- 1251. Protection for possession of tenant.
- 1252. Grounds for eviction in general.
- 1253. Landlord's right to occupy premises.
- 1254. Purchaser's right to possession.
- 1255. Administrative authorization of eviction suit.
- 1256. Notice of eviction.
- 1257. — In general; notice to tenant.
- 1258. — Notice to administrative agency.
- 1259. Proceedings to recover possession.
- 1260. — In general.
- 1261. — Pleading.
- 1262. — Evidence.
- 1263. — Questions of fact.
- 1264. — Order or judgment.
- 1265. Damages for wrongful eviction.

402. WAR AND NATIONAL EMERGENCY

II. MEASURES AND ACTS IN EXERCISE
OF FEDERAL POWER.(Cont'd)

- 1266. Offenses and prosecutions.
- 1267. Housing regulations in general.
- 1268. Emergency housing construction.

6. ALLOCATION AND RATIONING OF
COMMODITIES AND SERVICES.

- 1269. In general.
- 1270. Constitutional and statutory provisions.
- 1271. Commodities and services subject to regulation.
- 1272. Administration of rationing program.
- 1273. Orders and regulations in general.
- 1274. Allocation of commodities and services.
- 1275. Responsibility of dealer for acts of agents and employees.
- 1276. Suspension of right to operate.
- 1277. — In general.
- 1278. — Proceedings.
- 1279. — Order of suspension.
- 1280. — Review.
- 1281. Injunction against enforcement.
- 1282. Injunction against violation of regulations.
- 1283. — In general.
- 1284. — Proceedings.
- 1285. Offenses and prosecutions.

7. CONTROL AND RATIONING OF
PETROLEUM PRODUCTS.

- 1286. In general.
- 1287. Constitutional and statutory provisions.
- 1288. Commodities subject to regulation.
- 1289. Administration of price control.
- 1290. Orders and regulations in general.
- 1291. Validity of orders and regulations.
- 1292. — In general.
- 1293. — Arbitrary or unreasonable regulation.
- 1294. Allocations of commodities.
- 1295. Construction and operation of regulations.
- 1295.5. Violation of regulations.
- 1296. Export or import licenses.
- 1297. Establishment of prices.
- 1298. — In general.
- 1299. — Adjustment.
- 1300. Review of orders and regulations.
- 1301. — In general.

II. MEASURES AND ACTS IN EXERCISE
OF FEDERAL POWER.(Cont'd)

- 1302. — Matters reviewable.
- 1303. — Presentation of grounds in prior proceeding.
- 1304. — Scope of review.
- 1305. — Proceedings on review.
- 1306. Enforcement of price controls.
- 1307. Suspension of right to operate.
- 1308. Investigation, inspection, and discovery.
- 1309. Actions and proceedings to recover overcharges and penalties.
- 1310. — In general.
- 1311. — Time to sue and limitations.
- 1312. — Refund distribution proceedings.
- 1313. — Exhaustion of administrative remedies.
- 1314. Injunction against enforcement.
- 1315. Injunction against violation of regulations.
- 1315.5. Effect of established price on contractual rights and liabilities.
- 1316. Offenses and prosecutions.

8. LABOR AND WAGE CONTROL.

- 1317. In general.
- 1318. Constitutional and statutory provisions.
- 1319. Labor disputes.
- 1320. Wage control.
- 1321. Review and enforcement of orders and regulations.
- 1322. Penalties and prosecutions.

9. FOREIGN TRADE RESTRICTIONS.

- 1323. In general.
- 1324. Constitutional and statutory provisions.
- 1325. Executive proclamations and orders.
- 1326. Export restrictions.
- 1327. Import restrictions.
- 1328. Ban on travel.
- 1329. Bonds.
- 1330. Permits and licenses.
- 1331. Defenses.
- 1332. Searches and seizures.
- 1333. Forfeitures.
- 1334. — In general.
- 1335. — Proceedings.
- 1336. Claims to property blocked or forfeited.

402. WAR AND NATIONAL EMERGENCY

II. MEASURES AND ACTS IN EXERCISE OF FEDERAL POWER.(Cont'd)

- 1337. Fines and penalties.
- 1338. Offenses and prosecutions.

III. STATE SUPPLEMENTARY MEASURES.

- 1339. Civil defense in general.
- 1340. Constitutional and statutory provisions.
- 1341. Measures and acts in exercise of state power in general.
- 1342. Preemption by federal power.
- 1343. — In general.
- 1344. — Price control.
- 1345. — Rent regulation.
- 1346. Particular measures, orders, and regulations.
- 1347. — In general.
- 1348. — Air raids and blackouts.
- 1349. — Price and business controls.
- 1350. — Sedition and obstruction of war effort.
- 1351. Exemptions from liability while complying with regulations.

403. WAREHOUSEMEN

SUBJECTS INCLUDED

Regulation and conduct of the business of storage and safe-keeping, for compensation, of goods of any kind, whether ordinary goods in storehouses or at wharves, etc., or valuables in safes or vaults of safe-deposit companies, grain in elevators, cattle in stock yards, etc.

The mutual rights, duties, and liabilities of persons engaged in such business and those dealing with them

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Automobiles, garages and liverymen, see AUTOMOBILES

Bailment in general, see BAILMENT

Carriers as warehousemen, liabilities of, see CARRIERS

Money, special deposits in banks or trust companies, see FINANCE, BANKING, AND CREDIT IV, XI

United States bonded warehouses, see CUSTOMS DUTIES, INTERNAL REVENUE

- 1. Power to regulate.
- 2. Statutory and municipal regulations.
- 3. Who are warehousemen.
- 4. Incorporation and organization of companies.
- 5. Franchises and powers.
- 6. Licenses and taxes.
- 7. Supervision by public officers in general.
- 8. Conduct of business in general.
- 9. Duty to receive goods.
- 10. Contracts for storage in general.
- 11. Warehouse receipts.
 - 11.1. — In general.
- 12. — Nature and requisites in general.
- 13. — Making, issuance, and delivery.
- 14. — Construction and operation.
- 15. — Negotiability and transfer.
 - (.5). In general.
 - (1). Instruments negotiable or assignable.
 - (2). Operation and effect of indorsement or assignment.
 - (3). Pledges.
- 16. — Rights and remedies of holders in general.
- 17. — Bona fide purchasers.
- 18. Bonds for delivery.
- 19. Manner and place of storage.
- 20. Storing in bulk or mixing grain or other produce.
- 22. Insurance.
- 24. Loss of or injury to goods.
 - (.5). In general.
 - (1). Care required of warehousemen in general.
 - (2). Acts or omissions for which warehouseman is liable in general.
 - (3). Loss by fire.
 - (4). Loss by theft.
 - (5). Proximate cause of loss or injury.
 - (6). Contributory negligence of owner.
 - (7). Limitation of liability.
- 25. Delivery by warehouseman.
 - (.5). In general.

404. WASTE

- (1). Duty to deliver in general.
 - (2). Statutory provisions.
 - (3). Demand for delivery.
 - (4). Production of warehouse receipt or written order.
 - (5). Liability for misdelivery or nondelivery in general.
 - (6). Place of delivery.
 - (7). Wrongful sale or other disposition of property by warehouseman.
 - (8). Excuses for nondelivery or misdelivery.
27. Charges and expenses.
 28. Advances.
 29. Lien.
 - 29.1. — In general.
 30. — Nature and grounds in general.
 31. — Creation and existence.
 32. — Amount and extent.
 - 32.5. — Waiver.
 33. — Enforcement.
 34. Actions by or against warehousemen.
 - (5). In general.
 - (1). Nature and form of remedy.
 - (2). Right of action and defenses.
 - (3). Parties.
 - (4). Pleading.
 - (5). Presumptions and burden of proof.
 - (6). Admissibility of evidence.
 - (7). Weight and sufficiency of evidence.
 - (8). Damages.
 - (9). Questions for jury.
 - (10). Instructions.
 - (10.5). Verdict and findings.
 - (11). Judgment.
 35. Penalties for violations of regulations.
 36. Offenses by warehousemen.
 37. Offenses by persons dealing with warehousemen.
 38. Safe depositaries.
 39. — In general.
 40. — Statutory provisions.
 41. — Corporations in general.
 42. — Powers and functions of depositaries in general.
 43. — Leases of safe deposit boxes and deposits therein.

44. — Compensation or expenses and lien therefor.
45. — Loss of or injury to deposit.
46. — Redelivering of deposit.
47. — Actions.

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SUBJECTS INCLUDED

Acts done or permitted by tenants holding particular estates in real property, causing permanent or lasting injury to the inheritance or to rights of those entitled in reversion or remainder

Nature and extent of liability for such injuries in general

Remedies therefor

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Executors and other fiduciaries, waste by, see EXECUTORS AND ADMINISTRATORS, GUARDIAN AND WARD, TRUSTS

Rights, powers, and liabilities of—

Life tenants, see LIFE ESTATES

Tenants for years or at will, see LANDLORD AND TENANT

Tenants in common, see TENANCY IN COMMON

1. Nature and elements in general.
2. Statutory provisions.
3. Permissive waste.
4. Equitable waste.
5. Persons who may commit waste.
6. Particular acts or omissions constituting waste.
7. — In general.
8. — Minerals, mines, and quarries.
9. — Trees and timber.
10. — Buildings and fixtures.
11. Defenses.
12. Persons entitled to sue.
13. Persons liable.
14. Actions for waste.

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- 14.1. — In general.
15. — Nature and form of remedy.
16. — Estreperment.
17. — Injunction.
18. — Damages.
19. — Accounting.
20. — Proceedings.
21. Penalties, and actions therefor.
22. Forfeitures, and enforcement thereof.

405. WATER LAW

SUBJECTS INCLUDED

Bodies and streams of water, whether or not capable of ordinary navigation in their natural condition or as improved

Diffuse surface waters

Groundwater, percolating and subterranean waters

Riparian and littoral rights and liabilities in respect of waters, beds, and banks, and obstruction, diversion, and pollution of waters, flowage of uplands thereby, and ice formed on waters

Accretion, reliction, and avulsion and rights incident thereto

Appropriation of waters and priorities, permits, and other rights with respect thereto

General adjudication of all rights in a watercourse, body, or basin

Public access to and use of waters and their shores, beds, and banks

Artificially created water bodies and watercourses

Conveyances and contracts regarding waters and rights therein or appurtenant thereto

Prescriptive rights in or relating to waters

Provision for and regulation of the public water supply

Construction and operation of works for supply, control, and use of water as a motive power

Reclamation of arid lands and irrigation

Comprehensive, dedicated, and local water planning and management agencies, boards, districts, and regimes

International and interstate water resources management

Reserved waters, incident to setting aside or withdrawal of lands from public domain

Navigable waters, navigation and obstruction thereof, navigation improvements, ports and harbors, and rights in lands under such waters

Canals for purposes of navigation, and construction, maintenance, regulation, and use thereof

Drainage of swamp or lowlands by means of channels and other works constructed by public authority

Levees, embankments, and other works constructed by public authority to protect lands from flooding

Taxes and assessments incident to establishment and construction of such works

Water rights incident to weather modification and precipitation enhancement

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Boundaries, bodies and streams of water as, see BOUNDARIES, STATES

Bridges, see BRIDGES, RAILROADS

Corporations in general, matters applicable to, see CORPORATIONS AND BUSINESS ORGANIZATIONS

Indian water rights and management, see INDIANS

Logs, floatage of, see LOGS AND LOGGING

Water pollution statutes and regulations, see ENVIRONMENTAL LAW

Wetlands and coastal areas, protection of, see ENVIRONMENTAL LAW

Ferries, see FERRIES

Fishing in public waters, see FISH

Regulation of—
Commerce, see COMMERCE
Shipping in general, see SHIPPING

Rules of navigation for preventing collision, see COLLISION

Wharves, see WHARVES

Admiralty jurisdiction, see ADMIRALTY

Eminent domain and condemnation, exercise of power of, see EMINENT DOMAIN

Transportation of passengers and goods, see CARRIERS, SHIPPING

405. WATER LAW

Sewers and sanitary drains generally, see ENVIRONMENTAL LAW, MUNICIPAL CORPORATIONS

Taxation of canals established for purposes of navigation, see TAXATION

- I. IN GENERAL, ¶1000-1024.
- II. COMPREHENSIVE WATER RESOURCE PLANNING AND MANAGEMENT IN GENERAL, ¶1025-1059.
 - (A) IN GENERAL, ¶1025-1029.
 - (B) DISTRICTS, AGENCIES, AND OTHER ADMINISTRATIVE AUTHORITIES, ¶1030-1039.
 - (C) INTERSTATE WATER RESOURCES MANAGEMENT IN GENERAL, ¶1040-1049.
 - (D) INTERNATIONAL WATER RESOURCES MANAGEMENT IN GENERAL, ¶1050-1054.
 - (E) WATER BANKING, TRUSTS, TRANSFER AGREEMENTS, AND WHEELING, ¶1055-1059.
- III. NATURAL WATERCOURSES, LAKES, AND PONDS IN GENERAL, ¶1060-1082.
- IV. GROUNDWATER: SUBTERRANEAN AND PERCOLATING WATERS, ¶1083-1159.
- V. DIFFUSE SURFACE WATERS, ¶1160-1219.
 - (A) IN GENERAL, ¶1160-1194.
 - (B) ACTIONS OR OTHER PROCEEDINGS TO DETERMINE, ESTABLISH, AND PROTECT RIGHTS, ¶1195-1219.
- VI. RIPARIAN AND LITTORAL RIGHTS, ¶1220-1554.
 - (A) IN GENERAL, ¶1220-1274.
 - (B) TRANSFERS, RESERVATIONS, AND EXCEPTIONS OF RIPARIAN RIGHTS, ¶1275-1309.
 - (C) INJURIES TO RIPARIAN RIGHTS IN GENERAL, ¶1310-1454.
 - 1. IN GENERAL, ¶1310-1311.
 - 2. INJURY TO DOWNSTREAM OWNERS' RIGHTS BY OBSTRUCTION OR DETENTION OF WATERS, ¶1312-1349.
 - 3. INJURY TO RIPARIAN RIGHTS BY POLLUTION OR DEPOSITS, ¶1350-1384.
 - 4. INJURY TO RIPARIAN RIGHTS BY DIVERSION OF WATERS, ¶1385-1414.

- VI. RIPARIAN AND LITTORAL RIGHTS—Cont'd
- (C) INJURIES TO RIPARIAN RIGHTS IN GENERAL—Cont'd
- 5. INJURY CAUSED BY ACCELERATION OF FLOW OR INCREASE IN VOLUME IN WATERCOURSE, ¶1415-1419.
- 6. INJURY CAUSED BY DEEPENING NATURAL CHANNEL, ¶1420-1425.
- 7. INJURIES BY FLOWAGE, OR RAISING AND SETTING BACK WATER ONTO ANOTHER'S LAND, ¶1426-1448.
- 8. INJURY TO RIPARIAN LANDS INCIDENT TO FLOATAGE OF LOGS, ¶1449-1450.
- 9. NUISANCE, ¶1450.1-1454.
- (D) RIGHTS AS RIPARIAN OWNER TO BED AND BANKS OF WATER BODY IN GENERAL, ¶1455-1489.
- (E) ACCRETION, RELICTION, AND AVULSION, ¶1490-1524.
- (F) REGULATION AND PERMIT SYSTEMS FOR ALLOCATING RIPARIAN RIGHTS TO TAKE OR USE WATER, ¶1525-1534.
- (G) OTHER JUDICIAL INTERVENTION, ACTIONS, AND PROCEEDINGS TO ASCERTAIN AND APPORTION RIPARIAN RIGHTS, ¶1535-1554.
- VII. APPROPRIATION OF WATERS, ¶1555-1699.
 - (A) NATURE AND ELEMENTS IN GENERAL, ¶1555-1609.
 - (B) ADMINISTRATIVE REGULATION OF APPROPRIATION, ¶1610-1664.
 - (C) PRIVATE CIVIL ACTIONS TO DETERMINE, ESTABLISH, OR PROTECT RIGHTS, ¶1665-1699.
- VIII. RESERVED WATER RIGHTS, ¶1700-1733.
- IX. ARTIFICIAL PONDS, RESERVOIRS, CHANNELS, DAMS, AND OTHER WORKS, ¶1734-1764.
- X. PRESCRIPTIVE RIGHTS IN WATER OR FOR USE OR ACCESS TO WATERS, ¶1765-1819.
- XI. GENERAL ADJUDICATION OF ALL RIPARIAN, APPROPRIATIVE, RESERVED, AND OTHER RIGHTS IN WATERCOURSE, WATER BODY, OR BASIN, ¶1820-1859.
- XII. PUBLIC WATER SUPPLY, ¶1860-2289.

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XII. PUBLIC WATER SUPPLY—Cont'd

(A) IN GENERAL, ⚭1860–1864.

(B) DOMESTIC AND MUNICIPAL PURPOSES, ⚭1865–2274.

1. IN GENERAL, ⚭1865–1884.

2. LOCAL WATER DISTRICTS, ⚭1885–1909.

3. WATER OR WATERWORKS COMPANIES, ⚭1910–1924.

4. OTHER FRANCHISEES, ⚭1925–1934.

5. ACQUISITION OF WATER SOURCES AND RIGHTS INCIDENT THERETO, ⚭1935–1954.

6. RIGHTS IN LAND AND PUBLIC PLACES IN GENERAL, ⚭1955–1959.

7. SUPPLY AND DISTRIBUTION WORKS AND APPLIANCES, ⚭1960–1969.

8. PURITY OF WATER AND PROTECTION FROM POLLUTION OR DIVERSION, ⚭1970–2014.

9. ACTIONS TO ESTABLISH AND PROTECT WATER RIGHTS AND OTHER RIGHTS OF PROPERTY, ⚭2015–2019.

10. LICENSES AND TAXES, ⚭2020–2024.

11. SUPPLY TO MUNICIPALITIES, ⚭2025–2035.

12. SUPPLY TO PRIVATE CONSUMERS, ⚭2036–2079.

13. REGULATION OF SUPPLY AND USE, ⚭2080–2129.

14. WATER RATES, RENTS, CONNECTION FEES, AND OTHER CHARGES, ⚭2130–2244.

15. INJURIES INCIDENT TO SUPPLY OR USE, ⚭2245–2264.

16. INJURIES TO WORKS, MAINS, PIPES, OR APPLIANCES, ⚭2265–2269.

17. PENALTIES AND OFFENSES, ⚭2270–2274.

(C) MINING, MECHANICAL, AND MANUFACTURING PURPOSES, ⚭2275–2289.

XIII. RECLAMATION, IRRIGATION, AND OTHER AGRICULTURAL USE, ⚭2290–2504.

(A) IN GENERAL, ⚭2290–2294.

(B) RECLAMATION OF ARID LAND BY PUBLIC AUTHORITIES, ⚭2295–2354.

1. IN GENERAL, ⚭2295–2299.

2. RECLAMATION BY STATES, ⚭2300–2334.

XIII. RECLAMATION, IRRIGATION, AND OTHER AGRICULTURAL USE—Cont'd

(B) RECLAMATION OF ARID LAND BY PUBLIC AUTHORITIES —Cont'd

3. RECLAMATION BY UNITED STATES, ⚭2335–2354.

(C) IRRIGATION AND OTHER AGRICULTURAL PURPOSES, ⚭2355–2504.

1. IN GENERAL, ⚭2355–2359.

2. IRRIGATION DISTRICTS, ⚭2360–2404.

3. IRRIGATION OR DITCH COMPANIES AND ASSOCIATIONS, ⚭2405–2414.

4. ACQUISITION OF WATER RIGHTS, AND RIGHTS INCIDENT THERETO, ⚭2415–2419.

5. STORAGE, RESERVOIRS, DITCHES, AND CONDUITS, ⚭2420–2439.

6. ACTIONS TO ESTABLISH AND PROTECT WATER RIGHTS AND OTHER RIGHTS OF PROPERTY, ⚭2440–2444.

7. RIGHT TO SUPPLY OF WATER AND DUTY TO DISTRIBUTE, ⚭2445–2459.

8. SALE OF WATER AND SUPPLY AND USE FOR IRRIGATION, ⚭2460–2469.

9. REGULATION OF SUPPLY AND USE, ⚭2470–2474.

10. TOLLS AND OTHER CHARGES FOR WATER, ⚭2475–2484.

11. INJURIES INCIDENT TO SUPPLY OR USE, ⚭2485–2494.

12. INJURIES TO CANALS, DITCHES, OR OTHER WORKS OR APPLIANCES, ⚭2495–2499.

13. PENALTIES AND OFFENSES INCIDENT TO SUPPLY OR USE OF WATER, ⚭2500–2504.

XIV. ICE, ⚭2505–2514.

XV. NAVIGABLE WATERS, ⚭2515–2704.

(A) IN GENERAL, ⚭2515–2534.

(B) RIGHTS OF PUBLIC, ⚭2535–2644.

1. IN GENERAL, ⚭2535–2539.

2. IMPROVEMENT OF CHANNELS AND STREAMS, ⚭2540–2554.

3. HARBORS, PORTS, AND TERMINALS, ⚭2555–2579.

4. NAVIGATION, ⚭2580–2599.

5. OBSTRUCTION OF NAVIGATION IN GENERAL, INJURY, AND REMEDIES, ⚭2600–2634.

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XV. NAVIGABLE WATERS—Cont'd

(B) RIGHTS OF PUBLIC—Cont'd

6. PUBLIC USES OTHER THAN NAVIGATION, ⚖️2635–2639.

7. SEWAGE AND POLLUTION, ⚖️2640–2644.

(C) LANDS UNDER WATER, ⚖️2645–2704.

1. OWNERSHIP AND CONTROL IN GENERAL, ⚖️2645–2674.

2. GRANTS TO AND ACQUISITION BY PRIVATE OWNERS OR MUNICIPALITIES, ⚖️2675–2689.

3. RECLAMATION AND IMPROVEMENT, ⚖️2690–2704.

XVI. DRAINAGE OF SWAMP OR LOWLANDS BY PUBLIC AUTHORITY, ⚖️2705–2849.

(A) ESTABLISHMENT AND MAINTENANCE, ⚖️2705–2799.

(B) ASSESSMENTS AND SPECIAL TAXES, ⚖️2800–2849.

XVII. LEVEES AND FLOOD CONTROL THROUGH PUBLIC WORKS, ⚖️2850–2919.

XVIII. CANALS FOR NAVIGATIONAL USE, ⚖️2920–2989.

(A) ESTABLISHMENT, CONSTRUCTION, AND MAINTENANCE, ⚖️2920–2969.

(B) REGULATION AND OPERATION, ⚖️2970–2989.

XIX. WEATHER MODIFICATION, ⚖️2990–2991.

I. IN GENERAL.

1000. Nature and character of water and water rights.

1001. — In general.

1002. — Realty or personalty.

1003. — Character as usufructuary property.

1004. — As appurtenant or in gross.

1005. Constitutional and statutory provisions.

1006. Ownership of, and title to, waters.

1007. — In general.

1008. — Public and private ownership.

1009. — Title to waters and water rights in lands of the United States.

1010. — Title to waters and water rights in lands of the states.

1011. — Trust imposed on public waters in general.

I. IN GENERAL.(Cont'd)

1012. — Abandonment, relinquishment, or other alienation of public ownership or title.

1013. Right and authority to control and conserve.

1014. — In general.

1015. — United States.

1016. — States.

1017. Conveyances, easements, covenants, and contracts in general.

1018. — In general.

1019. — Contracts.

1020. — Conveyances in general.

1021. — Reservations and exceptions.

1022. — Easements, leases, and licenses.

1023. — Mortgages and liens.

II. COMPREHENSIVE WATER RESOURCE PLANNING AND MANAGEMENT IN GENERAL.

(A) IN GENERAL.

1025. In general.

1026. State or district water plans and management.

1027. — In general.

1028. — Statutes, regulations, and rules.

1029. — Goals and objectives.

(B) DISTRICTS, AGENCIES, AND OTHER ADMINISTRATIVE AUTHORITIES.

1030. In general.

1031. Nature and purpose.

1032. Proceedings for organization.

1033. Territorial extent.

1034. Officers and employees.

1035. Powers, proceedings and review.

1036. Rights and liabilities, in general.

1037. Actions.

(C) INTERSTATE WATER RESOURCES MANAGEMENT IN GENERAL.

1040. In general.

1041. Restrictions on interstate diversions.

1042. Interstate compacts or other agreements.

1043. Federal regulation and oversight.

1044. — In general.

1045. — Legislative allocation in general.

1046. — Boulder Canyon Project Act.

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(D) INTERNATIONAL WATER RESOURCES MANAGEMENT IN GENERAL.

- 1050. In general.
- 1051. Treaties and other agreements or protocols.

(E) WATER BANKING, TRUSTS, TRANSFER AGREEMENTS, AND WHEELING.

- 1055. In general.
- 1056. Temporary transfers of surplus or unused water rights.
- 1057. Use of water conveyance facilities by nonowners, as part of statewide or regional planning; water wheeling.

III. NATURAL WATERCOURSES, LAKES, AND PONDS IN GENERAL.

- 1060. In general.
- 1061. Constitutional and statutory provisions.
- 1062. What constitutes a natural watercourse.
- 1063. — In general.
- 1064. — Volume of water carried.
- 1065. — Flow or current.
- 1066. — Definite channel.
- 1067. — Multiple or braided threads.
- 1068. Effect of artificial construction or changes to part of watercourse.
- 1069. Source of water supply.
- 1070. What are lakes or ponds.
- 1071. Outlets and drainage.
- 1072. — In general.
- 1073. — Outlets in general.
- 1074. — Right to drain lakes or ponds.
- 1075. Public rights in great ponds.
- 1076. Determination as to existence and nature of watercourse.
- 1077. — In general.
- 1078. — Effect of local law.
- 1079. — Evidence and witnesses.
- 1080. — Questions of fact.

IV. GROUNDWATER: SUBTERRANEAN AND PERCOLATING WATERS.

- 1083. In general.
- 1084. Nature of groundwater.
- 1085. Constitutional, statutory, and regulatory provisions in general; preemption.
- 1086. Title, ownership, and rights.
- 1087. — In general.
- 1088. — Ownership or trusteeship in State.

IV. GROUNDWATER: SUBTERRANEAN AND PERCOLATING WATERS.(Cont'd)

- 1089. — Nature of right; usufructuary.
- 1090. Administrative powers and proceedings in general.
- 1091. Rights to groundwater flowing in defined channels, generally.
- 1092. Rights to springs in general.
- 1093. Rights in owner of overlying lands, in general.
- 1094. — In general.
- 1095. — Necessity of capture and withdrawal to vest rights.
- 1096. — Rights dependent on source of supply of groundwater.
- 1097. — Limitation to reasonable amount and beneficial purpose.
- 1098. — Correlative rights of landowners.
- 1099. — Use of water.
 - (1). In general.
 - (2). Domestic purposes.
 - (3). Irrigation.
- 1100. Well permits and regulation of drilling and construction.
- 1101. — In general.
- 1102. — Hydrologic surveys.
- 1103. — Effect of comprehensive management and conservation regime.
- 1104. — Proceedings in general.
- 1105. — Applications.
- 1106. — Objections and protests.
- 1107. — Evidence.
- 1108. — Issuance of permit.
- 1109. — Terms and conditions of permit.
- 1110. — Well inspections and testing.
- 1111. — Licensing of contractors or others performing work.
- 1112. — Change in location.
- 1113. — Judicial intervention or review.
- 1114. Artesian wells.
- 1115. Liability for acts affecting natural percolation of waters in general.
- 1116. Obstruction and detention of groundwaters.
- 1117. Liability for subsidence damage.
- 1118. Prevention of waste or taking for malicious purpose.
- 1119. Conflicts as between hydrologically connected surface and groundwaters.
- 1120. Diversion.

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IV. GROUNDWATER: SUBTERRANEAN AND PERCOLATING WATERS.(Cont'd)

- 1121. — In general.
- 1122. — Transfer to distant lands or locations for use or sale in general; antiexportation statutes and regulations.
- 1123. — Harm to correlative rights holders; injuries to wells and springs.
- 1124. Artificial use.
- 1125. Pollution.
- 1126. — In general.
- 1127. — Economic loss doctrine; necessity of physical harm.
- 1128. — Absolute liability.
- 1129. — Negligence.
- 1130. — Persons liable in general.
- 1131. — Joint liability.
- 1132. Forfeiture or other loss of right in groundwater.
- 1133. Transfer or lease of rights in groundwater.
- 1134. — In general.
- 1135. — Transfer incident to conveyance of overlying lands.
 - (1). In general.
 - (2). Reservations and exceptions.
 - (3). Tributary and nontributary groundwater.
 - (4). Effect of prior appropriation.
- 1136. — Leases.
- 1137. — Licenses.
- 1138. — Incumbrances and liens.
- 1139. Judicial intervention, actions, and review.
- 1140. — In general.
- 1141. — Nature of remedy.
- 1142. — Preliminary injunction.
- 1143. — Time to sue, limitations, and laches.
- 1144. — Pleading.
- 1145. — Parties.
- 1146. — Trial or hearing in general.
- 1147. — Evidence.
- 1148. — Fact questions.
- 1149. — Instructions.
- 1150. — Damages.
- 1151. — Injunction.
- 1152. — Other relief.
- 1153. — Judgment or order.

IV. GROUNDWATER: SUBTERRANEAN AND PERCOLATING WATERS.(Cont'd)

- 1154. — Review.
- 1155. — Costs and attorney fees.
- 1156. Offenses and penalties.

V. DIFFUSE SURFACE WATERS.

(A) IN GENERAL.

- 1160. In general.
- 1161. What are surface waters.
- 1162. Rights, duties, and liabilities in general.
- 1163. Rights to capture, own, or use surface water.
- 1164. Rule of reasonableness in general.
- 1165. Obstruction or repulsion of flow in general.
- 1166. Common enemy doctrine; right to avoid surface waters.
- 1167. Right to have natural drainage maintained.
- 1168. Drainage or discharge.
- 1169. — In general.
- 1170. — Artificial drainage or discharge in general.
- 1171. — Discharge into natural drain or watercourse.
- 1172. — Rights and duties of railroad companies.
- 1173. — Obstruction, overflow, breakage, or seepage.
- 1174. — Persons liable.
- 1175. Easement of drainage.
- 1176. — In general.
- 1177. — Nature and extent of rights granted in general.
- 1178. — Maintenance.
- 1179. — Alteration or overburden.
- 1180. — Change in location.
- 1181. — Obstruction or disturbance.
- 1182. — Rights as against purchasers of servient estate; notice.
- 1183. Transfer of easement or other right of drainage.
- 1184. — In general.
- 1185. — Grant.
- 1186. — Contract.
- 1187. — License.
- 1188. Abandonment, forfeiture, or other loss of right or privilege of drainage.

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V. DIFFUSE SURFACE WATERS.(Cont'd)

- 1189. Pollution.
- 1190. Rain water and eaves drip.

(B) ACTIONS OR OTHER PROCEEDINGS TO DETERMINE, ESTABLISH, AND PROTECT RIGHTS.

- 1195. In general.
- 1196. Rights of action and defenses in general.
- 1197. Economic loss as grounds.
- 1198. Nuisance.
- 1199. Preliminary injunction.
- 1200. Proceedings and relief.
- 1201. — In general.
- 1202. — Time to sue, limitations, and laches.
- 1203. — Parties.
- 1204. — Pleading.
- 1205. — Evidence.
- 1206. — Hearing.
- 1207. — Instructions.
- 1208. — Compensatory damages.
- 1209. — Punitive damages.
- 1210. — Injunction.
- 1211. — Other relief.
- 1212. Review.
- 1213. Costs and attorney fees.

VI. RIPARIAN AND LITTORAL RIGHTS.

(A) IN GENERAL.

- 1220. In general.
- 1221. Constitutional and statutory provisions.
- 1222. Application or abrogation of common law doctrine in general.
- 1223. Coexistence of common law and riparian law regimes.
- 1224. Total or partial replacement with system of appropriative rights.
- 1225. Who are riparian owners, and what is riparian land.
- 1226. Nature and quality of waters giving rise to riparian rights.
- 1227. Effect of local law.
- 1228. Nature and extent of rights in general.
- 1229. — In general.
- 1230. — Interest in real property, or personalty.
- 1231. — Title and rights in general.

VI. RIPARIAN AND LITTORAL RIGHTS.(Cont'd)

- 1232. — Correlative rights of riparian owners.
 - (1). In general.
 - (2). Consumptive uses.
 - (3). Boating, bathing, and recreational uses.
- 1233. — Maintenance of natural flow of watercourse.
- 1234. — View of water.
- 1235. — Access to water in general.
- 1236. — Access by public or other permittees.
- 1237. — Extent of right to use water in general.
- 1238. — Reasonable use.
- 1239. — Use for domestic purposes.
- 1240. — Use for agricultural purposes.
- 1241. — Use for recreational purposes in general.
- 1242. — Fishing.
- 1243. — Rights as to seaweed.
- 1244. — Protection of banks from erosion.
- 1245. — Nonriparian uses; use on nonriparian property or beyond watershed.
- 1246. Right to wharf out, build docks, and support shore.
- 1247. — In general.
- 1248. — Right to construct or maintain.
- 1249. — Authorization by public authority to construct, and application therefor; permits.
- 1250. — Structures.
 - (1). In general.
 - (2). Wharves, docks, piers and similar structures.
 - (3). Dockminiums and common interests in structures or areas.
*Matters not involving riparian or littoral rights, see
COMMON INTEREST COMMUNITIES.*
 - (4). Boat basins, revetments, and groins.
- 1251. — Appurtenance to upland property.
- 1252. — Injunction against construction or maintenance.
- 1253. — Abatement.
- 1254. Right to deepen natural channel of watercourse.
- 1255. Right to divert waters of natural watercourse.

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VI. RIPARIAN AND LITTORAL RIGHTS.(Cont'd)

- 1256. — In general.
- 1257. — As between states.
- 1258. — Nature and extent of diversion in general.
- 1259. — Restoration of water diverted.
- 1260. — Purpose and reasonableness of use.
- 1261. Right to impound and store waters.
- 1262. — In general.
- 1263. — Storage on riparian owner's land.
- 1264. Right to flow, or to raise and set back water onto, another's land.
- 1265. — In general.
- 1266. — Constitutional and statutory provisions.
- 1267. — Nature and existence of right to flow lands in general.
- 1268. — Transfers, grants, and reservations of rights in general.
 - (1). In general.
 - (2). Construction and operation.
 - (3). Effect of transfer of ownership, control, or rights in dam.
- 1269. — Easements.
- 1270. — Licenses.
- 1271. — Abandonment, forfeiture, or other loss of right.

(B) TRANSFERS, RESERVATIONS, AND EXCEPTIONS OF RIPARIAN RIGHTS.

- 1275. In general.
- 1276. Construction of grant in general.
- 1277. Presumption that conveyance of land includes appurtenant riparian rights.
- 1278. Reservation or exception of rights.
- 1279. Transfer of riparian rights separate from riparian land.
- 1280. Grant of right to use wharf, dock, or pier.
- 1281. Easements over riparian lands and for access to and use of waters.
- 1282. — In general.
- 1283. — Creation and existence.
- 1284. — Extent of right in general.
- 1285. — Location.
- 1286. — Purposes and mode of use.
- 1287. — Persons entitled to use.
- 1288. — Maintenance and repair.

VI. RIPARIAN AND LITTORAL RIGHTS.(Cont'd)

- 1289. — Alteration and misuse.
- 1290. — Right to construct or install and use ramp, dock, or other structures as incident to access easement.
- 1291. — Interference with or obstruction of right.
- 1292. — Termination.
- 1293. Leases.
- 1294. Licenses.
- 1295. Contracts.
- 1296. Loss of riparian rights in general.
- 1297. — In general.
- 1298. — Abandonment or non-use.
- 1299. — Revival of rights.

(C) INJURIES TO RIPARIAN RIGHTS IN GENERAL.

1. IN GENERAL.

- 1310. In general.

2. INJURY TO DOWNSTREAM OWNERS' RIGHTS BY OBSTRUCTION OR DETENTION OF WATERS.

- 1312. In general.
- 1313. Right to obstruct or detain waters in general.
- 1314. Reasonableness.
- 1315. Agreements between riparian owners as to obstruction and detention.
- 1316. Nature and extent of obstruction or detention.
- 1317. — In general.
- 1318. — Embankments or private levees.
- 1319. — Dams.
- 1320. — Bridges, trestles, and culverts.
- 1321. Causation.
- 1322. Persons liable.
- 1323. Removal or abatement of obstruction or encroachment.
- 1324. Judicial intervention, actions, and review.
- 1325. — In general.
- 1326. — Nature of remedy.
- 1327. — Right of action in general.
- 1328. — Defenses in general.
- 1329. — Preliminary injunction.
- 1330. — Time to sue, limitations, and laches.
- 1331. — Pleading.
- 1332. — Parties.

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VI. RIPARIAN AND LITTORAL RIGHTS.(Cont'd)

- 1333. — Trial or hearing in general.
- 1334. — Evidence.
- 1335. — Fact questions.
- 1336. — Instructions.
- 1337. — Findings and verdict.
- 1338. — Damages.
- 1339. — Injunction.
- 1340. — Other relief.
- 1341. — Judgment or order.
- 1342. — Review.
- 1343. — Costs and attorney fees.

3. INJURY TO RIPARIAN RIGHTS BY POLLUTION OR DEPOSITS.

- 1350. In general.
- 1351. Reasonableness of use that decreases purity.
- 1352. Acquisition by grant or purchase of right to pollute.
- 1353. Rights as to purity of water.
- 1354. Nature and extent of pollution in general.
- 1355. Mines and mining operations.
- 1356. Mills and factories.
- 1357. Noxious uses.
- 1358. Sewage and refuse matter.
- 1359. Dredging and disturbance of bed and banks.
- 1360. Persons entitled to relief.
- 1361. Persons liable.
- 1362. Removal or abatement of cause of pollution.
- 1363. Judicial intervention, actions, and review.
- 1364. — In general.
- 1365. — Nature of remedy.
- 1366. — Right of action in general.
- 1367. — Defenses in general.
- 1368. — Preliminary injunction.
- 1369. — Time to sue, limitations, and laches.
- 1370. — Pleading.
- 1371. — Parties.
- 1372. — Trial or hearing in general.
- 1373. — Evidence.
- 1374. — Fact questions.
- 1375. — Instructions.
- 1376. — Findings and verdict.
- 1377. — Damages.

VI. RIPARIAN AND LITTORAL RIGHTS.(Cont'd)

- 1378. — Injunction.
- 1379. — Other relief.
- 1380. — Judgment or order.
- 1381. — Review.
- 1382. — Costs and attorney fees.

4. INJURY TO RIPARIAN RIGHTS BY DIVERSION OF WATERS.

- 1385. In general.
- 1386. Statutory provisions.
- 1387. Nature and extent of diversion in general.
- 1388. Restoration of water diverted; unreasonable diminution of current.
- 1389. Persons liable.
- 1390. Removal or abatement of means or cause of diversion.
- 1391. Judicial intervention, actions, and review.
- 1392. — In general.
- 1393. — Nature of remedy.
- 1394. — Right of action in general.
- 1395. — Defenses in general.
- 1396. — Preliminary injunction.
- 1397. — Time to sue, limitations, and laches.
- 1398. — Pleading.
- 1399. — Parties.
- 1400. — Trial or hearing in general.
- 1401. — Evidence.
- 1402. — Fact questions.
- 1403. — Instructions.
- 1404. — Findings and verdict.
- 1405. — Damages.
- 1406. — Injunction.
- 1407. — Other relief.
- 1408. — Judgment or order.
- 1409. — Review.
- 1410. — Costs and attorney fees.

5. INJURY CAUSED BY ACCELERATION OF FLOW OR INCREASE IN VOLUME IN WATERCOURSE.

- 1415. In general.

6. INJURY CAUSED BY DEEPENING NATURAL CHANNEL.

- 1420. In general.

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**7. INJURIES BY FLOWAGE, OR RAISING
AND SETTING BACK WATER ONTO
ANOTHER'S LAND.**

- 1426. In general.
- 1427. Floods and freshets.
- 1428. Persons liable.
- 1429. Judicial intervention, actions, and review.
- 1430. — In general.
- 1431. — Nature of remedy.
- 1432. — Right of action in general.
- 1433. — Defenses in general.
- 1434. — Preliminary injunction.
- 1435. — Time to sue, limitations, and laches.
- 1436. — Pleading.
- 1437. — Parties.
- 1438. — Trial or hearing in general.
- 1439. — Evidence.
- 1440. — Fact questions.
- 1441. — Instructions.
- 1442. — Findings and verdict.
- 1443. — Damages.
- 1444. — Injunction.
- 1445. — Other relief.
- 1446. — Judgment or order.
- 1447. — Review.
- 1448. — Costs and attorney fees.

**8. INJURY TO RIPARIAN LANDS INCIDENT
TO FLOATAGE OF LOGS.**

- 1449. In general.

9. NUISANCE.

- 1450.1. In general.
- 1450.2. Obstruction or detention of waters.
- 1450.3. Pollution or deposits.
- 1450.4. Diversion of waters.
- 1450.5. Acceleration of flow or increase in volume.
- 1450.6. Deepening natural channel.
- 1450.7. Flowage.
- 1450.8. Floatage of logs.

**(D) RIGHTS AS RIPARIAN OWNER TO BED AND
BANKS OF WATER BODY IN GENERAL.**

- 1455. In general.
- 1456. Statutory provisions.
- 1457. Rights to bed in general.
- 1458. Rights to land between low and high water mark.

VI. RIPARIAN AND LITTORAL RIGHTS.(Cont'd)

- 1459. Rights to flats, sandbars, and islands in general.
- 1460. Rights in formations resulting from deposit of dredged material.
- 1461. Rights in personal property or debris washed or stranded upon riparian land.
- 1462. Rights in bed upon subsidence or recession of waters.
- 1463. Allocation or division as between riparian owners.
- 1464. — In general.
- 1465. — Extension of ownership to thread of channel or center of lake or pond.
- 1466. Protection and use in general.
- 1467. Right of reclamation and improvement.
- 1468. Conveyance of rights.
- 1469. Proceedings or actions to determine rights.
- 1470. — In general.
- 1471. — Nature of remedy.
- 1472. — Right of action and defenses in general.
- 1473. — Nuisance.
- 1474. — Preliminary injunction.
- 1475. — Time to sue, limitations, and laches.
- 1476. — Pleading.
- 1477. — Parties.
- 1478. — Trial or hearing in general.
- 1479. — Evidence.
- 1480. — Fact questions.
- 1481. — Instructions.
- 1482. — Findings and verdict.
- 1483. — Damages.
- 1484. — Injunction.
- 1485. — Other relief.
- 1486. — Judgment or order.
- 1487. — Review.
- 1488. — Costs and attorney fees.

(E) ACCRETION, RELICTION, AND AVULSION.

- 1490. In general.
- 1491. What constitutes accretion or reliction.
- 1492. Title to land formed by accretion or lost through reliction; effect on adjacent owners' boundaries.
- 1493. — In general.

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VI. RIPARIAN AND LITTORAL RIGHTS.(Cont'd)

- 1494. — Conveyance or lease of riparian or littoral land as including accretions.
- 1495. — Severance of accretions from original lands.
- 1496. — Apportionment of lands formed by accretion.
- 1497. — Separate grant of lands formed by accretion.
- 1498. — Batture.
- 1499. Actions to establish rights in accreted lands.
- 1500. — In general.
- 1501. — Nature of remedy.
- 1502. — Right of action and defenses in general.
- 1503. — Preliminary injunction.
- 1504. — Time to sue, limitations, and laches.
- 1505. — Pleading.
- 1506. — Parties.
- 1507. — Trial or hearing in general.
- 1508. — Evidence.
- 1509. — Fact questions.
- 1510. — Instructions.
- 1511. — Findings and verdict.
- 1512. — Damages.
- 1513. — Injunction.
- 1514. — Other relief.
- 1515. — Judgment or order.
- 1516. — Review.
- 1517. — Costs and attorney fees.
- 1518. Avulsion.
- 1519. — In general.
- 1520. — What constitutes avulsion.
- 1521. — Title to land opened up or cut off by event; effect on adjacent owners' boundaries.
- 1522. — Actions or proceedings to determine rights after avulsion event.
 - (1). In general.
 - (2). Nature of remedy.
 - (3). Right of action and defenses in general.
 - (4). Time to sue, limitations, and laches.
 - (5). Pleading.
 - (6). Parties.
 - (7). Trial or hearing in general.

VI. RIPARIAN AND LITTORAL RIGHTS.(Cont'd)

- (8). Evidence.
- (9). Fact questions.
- (10). Instructions.
- (11). Findings and verdict.
- (12). Judgment or order.
- (13). Review.
- (14). Costs and attorney fees.

(F) REGULATION AND PERMIT SYSTEMS FOR ALLOCATING RIPARIAN RIGHTS TO TAKE OR USE WATER.

- 1525. In general.
- 1526. Statutory provisions.
- 1527. Limitation on rights inherent in riparian property ownership.
- 1528. Exemptions.
- 1529. Matters peculiar to hybrid or dual-doctrine systems of allocation.
- 1530. Eligibility and permit criteria.
- 1531. Permit provisions and conditions.
- 1532. Administrative proceedings.
- 1533. Judicial intervention or review.

(G) OTHER JUDICIAL INTERVENTION, ACTIONS, AND PROCEEDINGS TO ASCERTAIN AND APPORTION RIPARIAN RIGHTS.

- 1535. In general.
- 1536. Nature of remedy.
- 1537. Right of action and defenses in general.
- 1538. Preliminary injunction.
- 1539. Time to sue, limitations, and laches.
- 1540. Pleading.
- 1541. Parties.
- 1542. Trial or hearing in general.
- 1543. Evidence.
- 1544. Fact questions.
- 1545. Instructions.
- 1546. Findings and verdict.
- 1547. Injunction.
- 1548. Other relief.
- 1549. Judgment or order.
- 1550. Review.
- 1551. Costs and attorney fees.

VII. APPROPRIATION OF WATERS.

(A) NATURE AND ELEMENTS IN GENERAL.

- 1555. In general.
- 1556. Constitutional and statutory provisions.

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VII. APPROPRIATION OF WATERS.(Cont'd)

- 1557. Consideration of public interest and public trust.
- 1558. Matters peculiar to appropriation of rights in public lands, in general.
- 1559. Waters and water rights subject to appropriation.
- 1560. — In general.
- 1561. — Free-flowing waters in general.
- 1562. — Tributary groundwater.
- 1563. — Waters in public domain.
- 1564. — Waters within interstate water-courses.
- 1565. — Federal reserved waters in general.
- 1566. — Waters reserved for Indian tribes or communities.
- 1567. Persons entitled to appropriate water or rights.
- 1568. Effect of state and local law, customs, and rules.
- 1569. Purposes and lands for which water may be appropriated.
- 1570. Nature and elements of appropriation.
- 1571. — In general.
- 1572. — Intent as to use of water; anti-speculation doctrine.
- 1573. — Actual capture and diversion of water.
- 1574. — Actual use of water and application to beneficial use.
- 1575. — Notice of appropriation.
- 1576. — Diligence in completion of works or application of water to use.
- 1577. Vesting of rights under appropriation in general.
- 1578. Priorities.
- 1579. — In general.
- 1580. — First in time, first in right.
- 1581. — Date of appropriation.
- 1582. — Calls by senior rights holders in general.
- 1583. — Futile call doctrine.
- 1584. — Delivery call petition by senior user.
- 1585. — Subordination agreements.
- 1586. — Effect of hybrid or dual-doctrine jurisdiction.

VII. APPROPRIATION OF WATERS.(Cont'd)

- 1587. — Priorities as against subsequent grants, entries, and patents in public lands.
- 1588. Nature and extent of rights acquired.
- 1589. — In general.
- 1590. — Rights as appurtenant to land.
- 1591. — Location of diversion point.
- 1592. — Augmentation, replacement, and substitute supply plans.
- 1593. — Quantity of water.
 - (1). In general.
 - (2). Amounts necessary for purposes of appropriation.
 - (3). Limits imposed by beneficial use requirement.
 - (4). Waste.
 - (5). Effect of senior riparian rights.
 - (6). Capacity of appropriator's system or works.
- 1594. — Use, recapture, and reuse of water; exclusive use.
- 1595. — Transbasin or interbasin diversions.
- 1596. — Storage of water.
- 1597. — Incidental rights to burden others' lands to access or convey water.
 - (1). In general.
 - (2). Canals, ditches, and other works.
 - (3). Condemnation of rights of way and other interests in lands.
 - (4). Trespass liability.
- 1598. Transfers or conveyances and contracts in general.
- 1599. Change in place, manner, or purpose of appropriation, diversion, or use of water.
- 1600. — In general.
- 1601. — Quantity; enlargement or additional appropriation.
- 1602. — Supplemental wells; Templeton doctrine.
- 1603. — Water exchanges.
- 1604. — Proceedings on application to amend permit or decree, or to transfer rights.
- 1605. — Review.
- 1606. Abandonment, relinquishment, cancellation, or forfeiture of rights.
- 1607. — In general.

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VII. APPROPRIATION OF WATERS.(Cont'd)

- 1608. — Resumption of use doctrine.
- 1609. — Proceedings to determine rights.

(B) ADMINISTRATIVE REGULATION OF APPROPRIATION.

- 1610. In general.
- 1611. Statutory provisions.
- 1612. Administrative bodies, in general.
- 1612.5. — In general.
- 1613. — Powers and authority.
- 1614. — Duties.
- 1615. State and local engineers, water masters, and other officers.
- 1616. — In general.
- 1617. — Appointment.
- 1618. — Powers and authority.
- 1619. — Duties.
- 1620. Rules and regulations, in general.
- 1621. Federal appropriation and local water law.
- 1622. Availability; prevention of overdraft, exploitation, groundwater mining, and other depletion of resources.
- 1623. Moratorium on appropriation.
- 1624. Application for permits to appropriate water.
- 1625. — In general.
- 1626. — Necessity for permit in general.
- 1627. — New or enlarged appropriations.
- 1628. — Notice.
- 1629. — Requisites and sufficiency, in general.
- 1630. — Specification of points of diversion and return.
- 1631. — Specification of quantities to be appropriated.
- 1632. — Blanket permits.
- 1633. — Fees for filing and recording.
- 1634. Permit pending diversion of waters and application to beneficial use in general.
- 1635. — In general.
- 1636. — Grant or denial.
- 1637. — Time to complete requisite steps for appropriation.
- 1638. — Extension of permit; excuses for delay and objections to extension.
 - (1). In general.
 - (2). Excuses for delay.

VII. APPROPRIATION OF WATERS.(Cont'd)

- (3). Objections to extension.
- 1639. Terms and conditions of permit.
- 1640. — In general.
- 1641. — Reporting requirements.
- 1642. — Public access to waters impounded or diverted.
- 1643. Cancellation or forfeiture of permit.
- 1644. Water rights certificate.
- 1645. — In general.
- 1646. — Issuance.
- 1647. — Amendment.
- 1648. — Cancellation or forfeiture.
- 1649. Administrative proceedings and review.
- 1650. — In general.
- 1651. — Jurisdiction.
- 1652. — Time for proceedings.
- 1653. — Parties.
- 1654. — Evidence.
- 1655. — Fact questions.
- 1656. — Findings.
- 1657. — Determination.
- 1658. — Judicial review.

(C) PRIVATE CIVIL ACTIONS TO DETERMINE, ESTABLISH, OR PROTECT RIGHTS.

- 1665. In general.
- 1666. Form of remedy.
- 1667. Rights of action and defenses; standing.
- 1668. Conversion of private suit to one of general adjudication.
- 1669. — In general.
- 1670. — Grounds.
- 1671. Injunction and enforcement.
- 1672. Jurisdiction and venue.
- 1673. Limitations and laches.
- 1674. Parties.
- 1675. — In general.
- 1676. — Necessary parties.
- 1677. Process or notice.
- 1678. Reference; appointment of water master or viewers.
- 1679. Pleading.
- 1680. Evidence.
- 1680.5. — In general.
- 1681. — Presumptions and burden of proof.
- 1682. — Admissibility.

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VII. APPROPRIATION OF WATERS.(Cont'd)

- 1683. — Weight and sufficiency.
- 1684. Trial or hearing.
- 1685. — In general.
- 1686. — Questions of fact.
- 1687. — Findings and verdict.
- 1688. Judgment or decree.
- 1689. — In general.
- 1690. — Conclusiveness and effect.
 - (1). In general.
 - (2). Matters concluded.
 - (3). Persons concluded.
- 1691. Relief awarded.
- 1692. — In general.
- 1693. — Physical solution doctrine.
- 1694. — Damages.
- 1695. Rehearing and review.
- 1696. Costs and attorney fees.

VIII. RESERVED WATER RIGHTS.

- 1700. In general.
- 1701. Incident to reservation or withdrawal of lands from public domain.
- 1702. — In general.
- 1703. — Waters necessary for primary purpose of federal reservation.
- 1704. — Implied reservation of water rights.
- 1705. — Waters reserved for purposes of Indian reservations in general.
- 1706. Limitation to unappropriated waters in general.
- 1707. Public water reserves.
- 1708. Effect of state law in general.
- 1709. Time of vesting of reserved water rights.
- 1710. — In general.
- 1711. — Date of reservation of lands.
- 1712. — Priorities and notice.
- 1713. Requisites for reservation of water rights.
- 1714. — In general.
- 1715. — Intent to reserve unappropriated waters.
- 1716. — Necessity of physical diversion or appropriation.
- 1717. — Necessity of application to beneficial use.

VIII. RESERVED WATER RIGHTS.(Cont'd)

- 1718. Nature of rights, title, or interest in reserved water.
- 1719. Waters reserved.
- 1720. — In general.
- 1721. — Groundwater.
- 1722. — Natural watercourses, lakes, and ponds.
- 1723. — Diffuse surface waters.
- 1724. — Waters beyond reservation boundaries.
- 1725. Quantity of water reserved.
- 1726. — In general.
- 1727. — Sufficiency to accomplish purposes of land reservation; primary and secondary purposes.
- 1728. — Time for determination of purposes.
- 1729. — Procedures for additional appropriations; effect of state law.
- 1730. Conveyance, sale, disposal, or other transfer of reserved rights.
- 1731. Loss of reserved rights through non-use, abandonment, forfeiture, or other cause.

IX. ARTIFICIAL PONDS, RESERVOIRS, CHANNELS, DAMS, AND OTHER WORKS.

- 1734. In general.
- 1735. Right to collect and detain water in general.
- 1736. Rights in artificial watercourses in general.
- 1737. Title to bed under impounded waters.
- 1738. Right to erect and maintain dams in general.
- 1739. Construction and maintenance of dams.
- 1740. — In general.
- 1741. — Rights and title to water impounded.
- 1742. — Regulatory inspection of dams.
Issues relating to hydroelectric generating facilities, see ELECTRICITY.
- 1743. Artificial ponds, watercourses, conduits, and other works.
- 1744. — In general.
- 1745. — Construction.
- 1746. — Maintenance and repairs.
- 1747. Draining mill ponds.
- 1748. Injuries to dams or other works.

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**IX. ARTIFICIAL PONDS, RESERVOIRS,
CHANNELS, DAMS, AND OTHER
WORKS.(Cont'd)**

- 1749. Injuries by overflow, breakage, leakage, or seepage from artificial water-courses or impoundments.
- 1750. Right and duty to prevent injury; contributory negligence.
- 1751. Removal or abatement of dams or other works.
- 1752. — In general; obligation to remove or abate.
- 1753. — Right to remove or abate, and rights and liabilities as to affected waters.
- 1754. Judicial intervention, actions, and review.
- 1755. — In general.
- 1756. — Rights of action and defenses.
- 1757. — Time to sue, limitations, and laches.
- 1758. — Injunction.
 - (1). In general.
 - (2). Nature and grounds of remedy.
 - (3). Estoppel, limitations, and laches.
 - (4). Enforcement.
- 1759. — Damages.
 - (1). In general.
 - (2). Measure or amount.
- 1760. — Proceedings and review.
 - (1). In general.
 - (2). Parties and pleading.
 - (3). Presumptions and burden of proof.
 - (4). Admissibility of evidence.
 - (5). Weight and sufficiency of evidence.
 - (6). Instructions.
 - (7). Hearing, determination, and relief.
 - (8). Review.

**X. PRESCRIPTIVE RIGHTS IN WATER OR
FOR USE OR ACCESS TO WATERS.**

- 1765. In general.
- 1766. By and against whom prescriptive rights may be acquired.
- 1767. Waters in which prescriptive rights may be established.
- 1768. — In general.

**X. PRESCRIPTIVE RIGHTS IN WATER
OR FOR USE OR ACCESS TO
WATERS.(Cont'd)**

- 1769. — Rights in irrigation ditch and waters.
 - (1). In general.
 - (2). Adverse possession of adjudicated priorities.
- 1770. Elements of prescription.
- 1771. — In general.
- 1772. — Mode and extent of use.
- 1773. — Adverse character of use and possession in general.
- 1774. — Visible and notorious use or possession.
- 1775. — Distinct and exclusive possession.
- 1776. — Time requisite; continuity and interruption.
- 1777. — Hostile character of use and possession in general.
- 1778. — Claim or color of right.
- 1779. Nature and extent of right acquired in general.
- 1780. Rights to use water.
- 1781. — In general.
- 1782. — Natural watercourses, lakes, and ponds.
- 1783. — Surface waters.
- 1784. — Groundwater.
- 1785. Rights to obstruct or redirect water.
- 1786. — In general.
- 1787. — Obstruction or repulsion.
- 1788. — Drainage and discharge.
- 1789. — Right to flow lands by raising and setting back water onto another's lands.
- 1790. Rights of access.
- 1791. Right to use ramp, dock, or pier.
- 1792. Loss or other termination of prescriptive rights.
- 1793. Judicial intervention, actions, and review.
 - (1). In general.
 - (2). Nature of remedy.
 - (3). Right of action and defenses.
 - (4). Preliminary injunction.
 - (5). Time to sue, limitations, and laches.
 - (6). Pleading.
 - (7). Parties.

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**X. PRESCRIPTIVE RIGHTS IN WATER
OR FOR USE OR ACCESS TO
WATERS.(Cont'd)**

- 1801. — Trial or hearing in general.
- 1802. — Evidence.
- 1803. — Fact questions.
- 1804. — Instructions.
- 1805. — Findings and verdict.
- 1806. — Damages.
- 1807. — Injunction.
- 1808. — Other relief.
- 1809. — Judgment or order.
- 1810. — Review.
- 1811. — Costs and attorney fees.

**XI. GENERAL ADJUDICATION OF ALL RIPARI-
AN, APPROPRIATIVE, RESERVED, AND
OTHER RIGHTS IN WATERCOURSE, WA-
TER BODY, OR BASIN.**

- 1820. In general.
- 1821. What law governs.
- 1822. Form of remedy.
- 1823. Rights of action and defenses; stand-
ing.
- 1824. Conversion of private suit to one of
general adjudication.
- 1825. — In general.
- 1826. — Grounds.
- 1827. Scope of inquiry on general adjudica-
tion.
- 1828. McCarran consent to adjudicate water
rights of United States in state court.
- 1829. Injunction and enforcement.
- 1830. Jurisdiction and venue.
- 1831. Limitations and laches.
- 1832. Parties.
- 1833. — In general.
- 1834. — Necessary parties.
 - (1). In general.
 - (2). States and United States.
- 1835. Process or notice.
- 1836. Reference; appointment of water mas-
ter or viewers.
- 1837. Report and recommendation of state
engineer.
- 1838. Pleading.
- 1839. Evidence.
- 1839.5. — In general.
- 1840. — Presumptions and burden of
proof.

**XI. GENERAL ADJUDICATION OF ALL RIPARI-
AN, APPROPRIATIVE, RESERVED, AND
OTHER RIGHTS IN WATERCOURSE, WA-
TER BODY, OR BASIN.(Cont'd)**

- 1841. — Admissibility.
- 1842. — Weight and sufficiency.
- 1843. Trial or hearing.
- 1844. — In general.
- 1845. — Questions of fact.
- 1846. — Findings and verdict.
- 1847. Judgment or decree.
- 1848. — In general.
- 1849. — Conclusiveness and effect.
 - (1). In general.
 - (2). Matters concluded.
 - (3). Persons concluded.
- 1850. Relief awarded.
- 1851. — In general.
- 1852. — Physical solution doctrine.
- 1853. — Mass allocation as between states.
- 1854. — Equitable apportionment as be-
tween states.
- 1855. — Damages.
- 1856. Rehearing and review.
- 1857. Costs and attorney fees.

XII. PUBLIC WATER SUPPLY.

(A) IN GENERAL.

- 1860. In general.
- 1861. Regulation and control by state and
state authorities.
- 1862. Federal participation in developing wa-
ter supplies.

(B) DOMESTIC AND MUNICIPAL PURPOSES.

1. IN GENERAL.

- 1865. In general.
- 1866. Nature and extent of right to water.
- 1867. Constitutional and statutory provisions.
- 1868. Establishment or acquisition of works
by public authorities.
- 1869. — In general.
- 1870. — Acting in governmental or pro-
prietary capacity.
- 1871. — Submission to voters.
- 1872. — Effect of grant of privilege or
franchise.
- 1873. — Funds and financing.

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XII. PUBLIC WATER SUPPLY.(Cont'd)

- 1874. — Acquisition by purchase or condemnation in general.
- 1875. — Option to purchase from franchise holder and exercise thereof in general.
- 1876. — Valuation of property sought to be acquired and payment therefor.
- 1877. — Title and rights acquired and obligations assumed.
- 1878. — Use and ownership.
- 1879. — Operation, maintenance, and control.
- 1880. — Sale or lease of waterworks.

2. LOCAL WATER DISTRICTS.

For comprehensive water resource management districts, see II.

- 1885. In general.
- 1886. Nature and existence of district.
- 1887. Formation.
- 1888. — In general.
- 1889. — Proceedings in general.
- 1890. — Petition.
- 1891. — Election.
- 1892. — Objections.
- 1893. — Review.
- 1894. Boundaries and annexation.
- 1895. Consolidation or splitting of district.
- 1896. Dissolution or discontinuance.
- 1897. Officers, employees, and agents.
- 1898. Powers and authority in general.
- 1899. Extraterritorial authority, activities, or services.
- 1900. Contracts.
- 1901. Service plan.
- 1902. Duties, liabilities, and immunity.
- 1903. Issuance of bonds.
- 1904. Tax levies, assessments, and liens.
- 1905. Special assessment districts or areas.
- 1906. Judicial intervention, actions, and review.

3. WATER OR WATERWORKS COMPANIES.

- 1910. In general.
- 1911. Incorporation and organization.
- 1912. Capital, stock, and stockholders; proxy voting.
- 1913. Officers and agents.
- 1914. Franchises, privileges, and powers.

XII. PUBLIC WATER SUPPLY.(Cont'd)

- 1915. — In general.
- 1916. — Proceedings to obtain franchises.
- 1917. — Nature and scope in general.
- 1918. — Agency or instrumentality of municipality to take or divert water.
- 1919. — Territory.
- 1920. — Duration, extension, and termination.
- 1921. — Forfeiture or annulment.
- 1922. — Disposition of property or franchise.
- 1923. — Mortgages and bonds.

4. OTHER FRANCHISEES.

- 1925. In general.
- 1926. Franchises to private individuals.
- 1927. — In general.
- 1928. — Status as public utilities.
- 1929. — Powers and duties.
- 1930. — Duration.
- 1931. — Cancellation, forfeiture, or other termination.

5. ACQUISITION OF WATER SOURCES AND RIGHTS INCIDENT THERETO.

- 1935. In general.
- 1936. Limitation to use for public water supply purposes.
- 1937. Reasonable use.
- 1938. Allocation of rights in water resources among public entities, or between public entity and private claimants.
- 1939. — In general.
- 1940. — Diversion of watercourse.
- 1941. — Withdrawal of groundwater.
- 1942. — Priority of domestic and municipal water use.
- 1943. Water supply permit.
- 1944. Pueblo rights.
- 1945. Grants.
- 1946. Contracts.
- 1947. Licenses.
- 1948. Right to recapture return waters.
- 1949. Abandonment or loss of rights acquired.
- 1950. Proceedings or actions to determine, establish, and protect rights.

405. WATER LAW

6. RIGHTS IN LAND AND PUBLIC PLACES IN GENERAL.

- 1955. In general.
- 1956. Right of way and other limited interests in land.
- 1957. Rights in streets and other public places.

7. SUPPLY AND DISTRIBUTION WORKS AND APPLIANCES.

- 1960. In general.
- 1961. Construction.
- 1962. Contracts.
- 1963. Maintenance and repair.
- 1964. Reservoirs, conduits, pumping stations, wells, and other works.
- 1965. Mains, pipes, and appliances for distribution.
- 1966. Injuries from establishment or construction of works.

8. PURITY OF WATER AND PROTECTION FROM POLLUTION OR DIVERSION.

- 1970. In general.
- 1971. Statutory and regulatory provisions.
- 1972. — In general.
- 1973. — Construction.
- 1974. Purity and fitness of water for domestic use and consumption.
- 1975. Establishment of agencies, departments, or boards.
- 1976. Water quality standards.
- 1977. — In general.
- 1978. — Power and authority to establish maximum contaminant levels.
- 1979. — Duty to adopt and enforce quality standards, in general.
- 1980. — Regulation, in general.
- 1981. — Effect of federal drinking water standards.
- 1982. — Primary enforcement responsibility.
- 1983. — Water testing and methodologies.
- 1984. — Particular contaminants.
- 1985. — Waters subject to quality regulation, in general.
- 1986. — Public or private sources and uses.
- 1987. — Water distributed for human consumption.

XII. PUBLIC WATER SUPPLY.(Cont'd)

- 1988. — Swimming pools, spas, and bathing houses.
- 1989. Proceedings or actions to compel filtration or other treatment.
- 1990. Receivership, and divestiture of non-performing systems.
- 1991. Civil claims arising from failure to meet quality standards.
- 1992. Permits for or restrictions on activities that endanger water quality.
- 1993. — In general.
- 1994. — Recreational uses.
- 1995. — Siting of facilities.
- 1996. — Discharge of waste.
- 1997. — Injection wells.
- 1998. Liability for pollution or endangerment of domestic water supply.
- 1999. — In general.
- 2000. — Discharge or release of contaminants.
- 2001. — Remedies and actions, in general.
- 2002. — Persons or entities entitled to relief.
- 2003. — Persons or entities liable.
- 2004. — Injunction.
- 2005. — Actions.
- 2006. — Prosecutions.
- 2007. — Clean-up and remediation.
- 2008. — Penalties.
- 2009. Fluoridation of water supply.
- 2010. Diverting or impeding flow of waters intended for domestic use.

9. ACTIONS TO ESTABLISH AND PROTECT WATER RIGHTS AND OTHER RIGHTS OF PROPERTY.

- 2015. In general.

10. LICENSES AND TAXES.

- 2020. In general.

11. SUPPLY TO MUNICIPALITIES.

- 2025. In general.
- 2026. Contracts in general.
- 2027. Construction and operation.
- 2028. Performance and breach in general.
- 2029. Quantity and pressure.
- 2030. Compensation or charges.
- 2031. Modification of contract.
- 2032. Abandonment.

405. WATER LAW

XII. PUBLIC WATER SUPPLY.(Cont'd)

2033. Rescission, cancellation, or other termination.

12. SUPPLY TO PRIVATE CONSUMERS.

- 2036. In general.
- 2037. Right and duty to supply in general.
- 2038. Moratorium on new connections or increased usage.
- 2039. Application for water service connection.
- 2040. — In general.
- 2041. — Form and requisites.
- 2042. — Grant or denial.
- 2043. — Judicial remedies; injunction.
- 2044. Discrimination in supplying water to customers.
- 2045. — In general.
- 2046. — Effect of supplying water beyond corporate limits.
Rate discrimination, see §2165.
- 2047. Agreements to furnish water.
- 2048. — In general.
- 2049. — Parties.
- 2050. — Validity and enforceability.
- 2051. — Construction of contract, generally.
- 2052. — Terms and conditions.
- 2053. — Quantity of water contemplated by contract.
- 2054. — Performance and breach.
- 2055. — Duration, in general.
- 2056. — Termination, and grounds therefor.
- 2057. — Injunction against discontinuance of service.
- 2058. — Wrongful termination or discontinuance.
- 2059. Abandoning service.
- 2060. Contracts for construction of works to supply water.
- 2061. — In general.
- 2062. — Deposit paid against construction costs, and return.
- 2063. — Ownership and control of works.
- 2064. — Authority and duty to operate and maintain.
- 2065. Provider's authority to dispose of surplus water.
- 2066. Transfer of water company or works.

XII. PUBLIC WATER SUPPLY.(Cont'd)

- 2067. — In general.
- 2068. — Assignment of contracts.
- 2069. — Effect on rights and obligations to furnish water.
- 2070. Actions.
- 2071. — In general.
- 2072. — Persons entitled to sue.
- 2073. — Persons liable.
- 2074. — Trial or hearing.
- 2075. — Evidence.
- 2076. — Questions for jury.
- 2077. — Instructions.
- 2078. — Damages.

13. REGULATION OF SUPPLY AND USE.

- 2080. In general.
- 2081. Statutory and regulatory provisions and rules in general.
- 2082. Power and duty to regulate, conserve, and manage water resources in general.
- 2083. State and local control.
- 2084. Public interest.
- 2085. Public regulatory commissions, boards, and officers.
- 2086. — In general.
- 2087. — Powers and duties.
- 2088. — Proceedings in general.
- 2089. — Judicial intervention and review.
- 2090. Entities, systems, and persons subject to public utilities regulation.
- 2091. — In general.
- 2092. — Whether provider is a public utility.
- 2093. — Exemptions in general.
- 2094. — Municipally owned facilities.
- 2095. Certificates of public convenience and necessity.
- 2096. — In general.
- 2097. — Eligibility and application.
- 2098. — Proceedings on application, and issuance.
- 2099. — Transfer of certificate.
- 2100. — Abandonment of certificate.
- 2101. — Forfeiture or other termination of certificate.
- 2102. Water distribution permits for private systems.
- 2103. Service areas.

405. WATER LAW

XII. PUBLIC WATER SUPPLY.(Cont'd)

- 2104. — In general.
- 2105. — Areas within or adjacent to municipality.
- 2106. — Unincorporated areas.
- 2107. — Service agreements between providers.
- 2108. — Municipal water delivery strategies for supply to unincorporated or extraterritorial areas.
- 2109. — Disputes in general.
- 2110. — Priorities and first-in-field doctrine.
- 2111. — Encroachment and curtailment in general.
- 2112. — Statutorily protected service areas.
- 2113. — Expansion of service area.
- 2114. — Abandonment or discontinuance of service to area.
- 2115. — Proceedings to resolve disputes.
- 2116. Compulsory connection to centralized public water supply, and termination of use of wells.
- 2117. Conditions or exactions incident to connecting to public system.
- 2118. Requirements for metering.
- 2119. Shut-off of supply for violation of rules and regulations.
- 2120. Moratorium on new or increased level of service.
- 2121. Emergency conservation, safety, and public welfare restrictions on water usage.
- 2122. — In general.
- 2123. — Curtailment of particular uses.
- 2124. — Quantity restrictions and per capita usage limits.
- 2125. — Restricting exportation of water outside service area.
- 2126. Agreements for use of unused system transport capacity; requirements of wheeling statutes.

14. WATER RATES, RENTS, CONNECTION FEES, AND OTHER CHARGES.

- 2130. In general.
- 2131. Right to make charge in general.
- 2132. — In general.
- 2133. — Compulsory connection to municipal supply.

XII. PUBLIC WATER SUPPLY.(Cont'd)

- 2134. — Contractual services and rates.
- 2135. Initiative and referendum.
- 2136. Persons or entities subject to charges.
- 2137. — In general.
- 2138. — Landlord and tenant.
- 2139. — Users and nonusers.
- 2140. — Transfer of ownership of property served.
- 2141. Types of charges and fees.
- 2142. — In general.
- 2143. — Connection and capitalization fees.
- 2144. — Impact fees.
- 2145. — Standby and availability charges.
- 2146. — Charge for fire protection service.
- 2147. — Minimum periodic service charges.
- 2148. — Compensation for wheeling use of system transport capacity.
- 2149. Charges as taxes or assessments.
- 2150. — In general.
- 2151. — Necessity of voter approval.
- 2152. Billing.
- 2153. — In general.
- 2154. — Statements and enclosures.
- 2155. — Billing period or cycle.
- 2156. — Disputes as to charges.
- 2157. Funds.
- 2158. — In general.
- 2159. — Deposits.
- 2160. — Surplus funds.
- 2161. Water illegally taken.
- 2162. — In general.
- 2163. — Nature and form of remedy.
- 2164. — Persons liable.
- 2165. Uniformity of charges.
- 2166. — In general.
- 2167. — Similar situations, classifications, or categories.
- 2168. — Rational basis for different rates.
- 2169. — Flat rates and meter rates.
- 2170. — Effect of contracts.
- 2171. — Municipal residents and nonresidents.
- 2172. — Different rates for or as between commercial users.
- 2173. — Different rates for prior and new users.

405. WATER LAW

XII. PUBLIC WATER SUPPLY.(Cont'd)

- 2174. — Different regions within service area.
- 2175. — Different types, character, or conditions of service.
- 2176. — Supply to multiple-unit structures or complexes.
- 2177. Supply free of charge to some customers in general.
- 2178. Exemptions.
- 2179. — In general.
- 2180. — Supply to public bodies or facilities.
- 2181. — Charitable, religious, or educational institutions or uses.
- 2182. Rate and amount in general.
- 2183. — In general.
- 2184. — Reasonableness in general.
- 2185. — Methodologies; establishment of rate base.
- 2186. — Rate of return.
- 2187. — Effect of usage or consumption on rate charged.
- 2188. Regulatory and ratemaking procedures.
- 2189. — In general.
- 2190. — Interim rates.
- 2191. — Jurisdiction.
- 2192. — Notice.
- 2193. — Hearing, in general.
- 2194. — Evidence.
- 2195. — Findings and adjudication.
- 2196. — Collateral challenge to ruling or order.
- 2197. Revision, increase, or reductions of charges.
- 2198. — In general.
- 2199. — Grounds for adjustment.
- 2200. — Methodologies used to calculate adjustment.
- 2201. — Proceedings.
 - (1). In general.
 - (2). Hearing.
 - (3). Evidence and witnesses.
 - (4). Findings and determination.
- 2202. Contract depriving municipality of right to establish rates.
- 2203. Water meters.
- 2204. — In general.
- 2205. — Right to install.
- 2206. — Duty to install.

XII. PUBLIC WATER SUPPLY.(Cont'd)

- 2207. — Cost of meter and charges for installation.
- 2208. — Inspection, testing, maintenance, and repairs.
- 2209. — Meter reading and billing schedules.
- 2210. Hydrant rentals and charges for service.
- 2211. Judicial intervention or review of administrative determinations.
- 2212. — In general.
- 2213. — Exhaustion of administrative remedies.
- 2214. — Jurisdiction.
- 2215. — Venue.
- 2216. — Right of review.
- 2217. — Decisions and acts reviewable.
- 2218. — Temporary injunctive relief.
- 2219. — Time to seek review.
- 2220. — Preservation of questions in administrative proceedings.
- 2221. — Scope of review in general.
- 2222. — Review of discretion.
- 2223. — Fact questions.
- 2224. — Arbitrary, unreasonable, or capricious action.
- 2225. — Harmless or prejudicial error.
- 2226. — Determination and disposition.
- 2227. — Actions.
- 2228. — Injunction.
- 2229. Refusal to supply or turning off water for nonpayment of charges.
- 2230. — In general.
- 2231. — Restraining or enjoining discontinuance of supply.
- 2232. — Actions for wrongful discontinuance.
- 2233. Lien and enforcement.
- 2234. Payment, collection, and recovery back.
- 2235. — In general.
- 2236. — Refund of overcharges in general.
- 2237. — Payments made under duress or mistake of fact or law.
- 2238. — Time for application or proceedings; limitations.
- 15. INJURIES INCIDENT TO SUPPLY OR USE.**
- 2245. In general.
- 2246. Notice of defects; duty to inspect.
- 2247. Insufficiency of supply.

405. WATER LAW

XII. PUBLIC WATER SUPPLY.(Cont'd)

- 2248. Impurity of water.
- 2249. Overflow or leakage.
- 2250. — In general.
- 2251. — Notice of defect.
- 2252. — Duty to test, inspect, and replace.
- 2253. Location and condition of meters, boxes, manholes, and other appliances or works.
- 2254. Miscellaneous defects or failures.
- 2255. Actions.
- 2256. — In general.
- 2257. — Time to sue, and laches.
- 2258. — Pleading and parties.
- 2259. — Evidence.
- 2260. — Questions for jury.
- 2261. — Findings, verdict, and judgment.
- 2262. — Damages and other relief.

16. INJURIES TO WORKS, MAINS, PIPES, OR APPLIANCES.

- 2265. In general.
- 2266. Actions.
- 2267. Damages.

17. PENALTIES AND OFFENSES.

- 2270. In general.
- 2271. Penalties for violations of regulations.
- 2272. Offenses incident to supply or use of water.

(C) MINING, MECHANICAL, AND MANUFACTURING PURPOSES.

- 2275. In general.
- 2276. Nature and extent of right to water.
- 2277. Water or water-power companies.
- 2278. Acquisition of water rights, and rights incident thereto.
- 2279. Right of way and other interests in land.
- 2280. Actions to establish and protect water rights and other rights of property.
- 2281. Supply to consumers.
- 2282. Sale or lease of water.
- 2283. Tolls and other charges for water.
- 2284. Injuries incident to supply and use.

XIII. RECLAMATION, IRRIGATION, AND OTHER AGRICULTURAL USE.

(A) IN GENERAL.

- 2290. In general.
- 2291. Nature and extent of right to water in general.
- 2292. Constitutional and statutory provisions.
- 2293. Supervision by public authorities in general.

(B) RECLAMATION OF ARID LAND BY PUBLIC AUTHORITIES.

1. IN GENERAL.

- 2295. In general.
- 2296. Power to establish reclamation projects.
- 2297. Purposes.

2. RECLAMATION BY STATES.

- 2300. In general.
- 2301. Constitutional and statutory provisions.
- 2302. Carey Act projects in general.
- 2303. Segregation of federal lands for settlement.
- 2304. — In general.
- 2305. — Acreage limitations.
- 2306. — Necessity of actual settlement.
- 2307. — Entry fee and payment for lands.
- 2308. — Beneficial use of water; cultivation and irrigation of lands.
- 2309. — Time limits.
- 2310. — Donation or grant of patent to settlers or entrymen.
- 2311. Rights of way for canals or ditches.
- 2311.5. — In general.
- 2312. — Establishment of projects, in general.
- 2313. — Statutory and regulatory authorization.
- 2314. Public notice of project.
- 2315. Determination of lands included in reclamation district, and review.
- 2316. Per-acre charges for water.
- 2317. — In general.
- 2318. — Time for estimation and apportionment.
- 2319. — Waiver of preconstruction determination.
- 2320. — Limitation to actual costs.
- 2321. Administrative approval of project plan.

405. WATER LAW

XIII. RECLAMATION, IRRIGATION, AND OTHER AGRICULTURAL USE.(Cont'd)

- 2322. Construction contracts.
- 2323. — In general.
- 2324. — Authority to contract.
- 2325. — Performance bonds.
- 2326. — Development or construction companies.
- 2327. — Status as public or private entity.
- 2328. — Financing and construction or facilities; sale of bonds.
- 2329. — Title and rights in irrigation system and waters.
- 2330. — Contracts with settlers for water supply; deferred payments.
- 2331. — Right to issuance of water stock or shares.
- 2332. — Limitations on water contracts or amount of stock issued.
- 2333. — Liens for construction costs.

3. RECLAMATION BY UNITED STATES.

- 2335. In general.
- 2336. Constitutional and statutory provisions.
- 2337. Purpose and construction.
- 2338. Administrative interpretation.
- 2339. Power and authority to establish projects.
- 2340. Federal administration of program; reclamation bureau.
- 2341. Appropriation, purchase, or condemnation of water rights.
- 2342. Effect of state law.
- 2343. Title to project water rights.
- 2344. Water user acreage limitations.
- 2345. Excess lands and charges therefor.
- 2346. Residency requirement.
- 2347. Repayment of construction costs; assessments.
- 2348. Subsidy amendments.
- 2349. Contracts for construction of works.
- 2350. Federal operation and management of projects, in general.
- 2351. Uses of project water, in general.
- 2352. Distribution of project waters.
- 2353. Contracts between federal government and local districts or associations.
- 2354. Delegation of distribution functions to local districts.

(C) IRRIGATION AND OTHER AGRICULTURAL PURPOSES.

1. IN GENERAL.

- 2355. In general.
- 2356. Nature and extent of right to water in general.
- 2357. Constitutional and statutory provisions.
- 2358. Supervision by public authorities in general.

2. IRRIGATION DISTRICTS.

- 2360. In general.
- 2361. Nature, creation, and incidents in general.
- 2362. Proceedings for organization.
- 2363. — In general.
- 2364. — Petitioner's bond.
- 2365. — Judicial confirmation or review.
- 2366. Territorial extent, and annexation or inclusion of land.
- 2367. — In general.
- 2368. — Petition for exclusion from district.
- 2369. — Consolidation of districts.
- 2370. District officers.
- 2371. District employees.
- 2372. Duties and liabilities.
- 2373. — In general.
- 2374. — Immunity or limited liability.
- 2375. Powers and proceedings in general.
- 2376. Contracts.
- 2377. Property acquisition and disposition.
- 2378. Torts.
- 2379. Bonds and other securities.
- 2380. — In general.
- 2381. — Preliminary proceedings.
- 2382. — Voting on bond issue.
- 2383. — Form, requisites, and validity.
- 2384. — Cancellation for invalidity.
- 2385. — Issuance, disposition, and proceeds.
- 2386. — Negotiability.
- 2387. — Payment and collection.
- 2388. — Mortgages.
- 2389. — Actions.
- 2390. Assessments, taxes, and lien and enforcement thereof.
- 2391. — In general.
- 2392. — Property liable.

405. WATER LAW

**XIII. RECLAMATION, IRRIGATION,
AND OTHER AGRICULTURAL
USE.(Cont'd)**

- 2393. — Benefit to property.
- 2394. — Exemptions.
- 2395. — Levy and assessment.
- 2396. — Objections and protests.
- 2397. — Payment, and recovery of assessments or taxes paid.
- 2398. — Collection and enforcement.
- 2399. — Remedies for wrongful enforcement.
- 2400. Control and disbursement of funds.
- 2401. Dissolution.

**3. IRRIGATION OR DITCH COMPANIES
AND ASSOCIATIONS.**

- 2405. In general.
- 2406. Irrigation or ditch companies.
- 2407. — In general.
- 2408. — Capital, stock, and stockholders.
- 2409. Mutual ditch companies or associations and joint-stock companies, for irrigation of lands of members.
- 2410. Private irrigation corporation.

**4. ACQUISITION OF WATER RIGHTS, AND
RIGHTS INCIDENT THERETO.**

- 2415. In general.
- 2416. Rights of way and other interests in land.

**5. STORAGE, RESERVOIRS, DITCHES,
AND CONDUITS.**

- 2420. In general.
- 2421. Storage of water, and reservoirs therefor.
- 2422. Irrigation ditches, canals, and other conduits.
- 2423. — In general.
- 2424. — Statutory provisions.
- 2425. — Authority to establish and control in general.
- 2426. — Agreements or contracts.
- 2427. — Water rights and ditch rights, distinguished.
- 2428. — Easements in general.
- 2429. — Easement appurtenant or in gross.
- 2430. — Construction.

**XIII. RECLAMATION, IRRIGATION,
AND OTHER AGRICULTURAL
USE.(Cont'd)**

- 2431. — Right and duty to enter lands to conduct maintenance and effect repairs.
- 2432. — Abandonment, forfeiture, or other termination.
- 2433. — Enlargement or alteration of use.
- 2434. — Location.
- 2435. — Bridges or other structures over ditches and conduits.
- 2436. Injuries from construction of works.
- 2437. — In general.
- 2438. — Nuisance.
- 2439. Transfer of rights in ditches, canals, and other conduits.

**6. ACTIONS TO ESTABLISH AND PROTECT WATER
RIGHTS AND OTHER RIGHTS OF PROPERTY.**

- 2440. In general.
- 2441. Injunction.
- 2442. Damages.

**7. RIGHT TO SUPPLY OF WATER
AND DUTY TO DISTRIBUTE.**

- 2445. In general.
- 2446. Nature of right.
- 2447. Conditions.
- 2448. Quantity.
- 2449. Priority.
- 2450. Discrimination.
- 2451. Lands within irrigation district.
- 2452. Stockholders or members of company or association.
- 2453. Necessity of application to beneficial use.
- 2454. Place of delivery.
- 2455. Abandonment or termination of right or duty.
- 2456. Transfer of right or duty.
- 2457. — In general.
- 2458. — Effect of transfer of land or stock.

**8. SALE OF WATER AND SUPPLY
AND USE FOR IRRIGATION.**

- 2460. In general.
- 2461. Contracts.
- 2462. — In general.
- 2463. — Validity.
- 2464. — Construction and operation.

405. WATER LAW

**XIII. RECLAMATION, IRRIGATION,
AND OTHER AGRICULTURAL
USE.(Cont'd)**

- 2465. — Performance or breach.
- 2466. — Actions.

9. REGULATION OF SUPPLY AND USE.

- 2470. In general.
- 2471. Rules and regulations in general.
- 2472. Regulation by public authority.
- 2473. Contracts.

10. TOLLS AND OTHER CHARGES FOR WATER.

- 2475. In general.
- 2476. Reasonableness of charges; regulation.
- 2477. Discrimination.
- 2478. Payment and collection.
- 2479. Objections and protests.
- 2480. — In general.
- 2481. — Proceedings and relief against unreasonable rates.
- 2482. Lien for tolls and charges on land or crops.

11. INJURIES INCIDENT TO SUPPLY OR USE.

- 2485. In general.
- 2486. Personal injuries.
- 2487. Property damage in general.
- 2488. Failure or insufficiency of supply.
- 2489. Overflow, leakage, and runoff.
- 2490. Nuisance.
- 2491. Actions.

**12. INJURIES TO CANALS, DITCHES, OR
OTHER WORKS OR APPLIANCES.**

- 2495. In general.
- 2496. Injunction.
- 2497. Actions.
- 2498. Damages.

**13. PENALTIES AND OFFENSES INCIDENT
TO SUPPLY OR USE OF WATER.**

- 2500. In general.
- 2501. Penalties and forfeitures.
- 2502. Offenses.

XIV. ICE.

- 2505. Nature of property.
- 2506. Rights of riparian proprietors in general.

XIV. ICE.(Cont'd)

- 2507. Public nonnavigable waters.
- 2508. Artificial ponds, reservoirs, and water-courses.
- 2509. Conveyances, licenses, and contracts.
- 2510. Injuries to ice.
- 2511. Cutting and removing ice.

XV. NAVIGABLE WATERS.

(A) IN GENERAL.

- 2515. In general.
- 2516. Navigability in general.
- 2517. — In general.
- 2518. — Statutory declaration as to navigability.
- 2519. — Title and rights held in public trust.
- 2520. — Test of navigability in general.
- 2521. — Effect of federal law.
- 2522. — Susceptibility of waters for use in commerce in general.
- 2523. — Capacity for floatage.
- 2524. — Waters navigable in natural condition, or through reasonable improvements.
- 2525. — Sporadic or exceptional capability for navigation; temporary conditions.
- 2526. — Effect of sandbars, falls, or other obstructions or impediments to navigation.
- 2527. — Effect of disuse for navigation, or change in conditions.
- 2528. — Ebb and flow of tide.
- 2529. — Specific waters.
- 2530. — Evidence as to navigability.
- 2531. — Questions of fact.

(B) RIGHTS OF PUBLIC.

1. IN GENERAL.

- 2535. In general.
- 2536. Power to control and regulate.
- 2537. Constitutional and statutory provisions.
- 2538. Ownership of waters.

2. IMPROVEMENT OF CHANNELS AND STREAMS.

- 2540. In general.
- 2541. Power to make or authorize.
- 2542. Permits.
- 2543. Injuries from improvements.

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XV. NAVIGABLE WATERS.(Cont'd)

- 2544. Waterway districts.
- 2545. Navigation improvement companies.
- 2546. Lease of slack-water improvements.
- 2547. Construction and operation of improvements and works.
- 2548. — In general.
- 2549. — Contracts, performance, and breach.
- 2550. Assessments and taxes, and liability for cost of work.
- 2551. Tolls and other charges.
- 2552. Injuries to vessels from operation of locks.

3. HARBORS, PORTS, AND TERMINALS.

- 2555. In general.
- 2556. Statutes, ordinances, and regulations.
- 2557. Power and authority to establish, in general.
- 2558. Federal and local control; preemption.
- 2559. Port authorities, districts, commissions, and boards.
- 2560. — In general.
- 2561. — Officers and members; appointment and terms.
- 2562. — Powers and proceedings.
- 2563. — Duties and liabilities in general.
- 2564. — Tort claims; immunity.
- 2565. — Employees and employment issues.
- 2566. Licensing of deepwater port.
- 2567. Establishment of harbor line, and effect on riparian owners.
- 2568. Mode and plan of construction and improvements.
- 2569. — In general.
- 2570. — Contracts.
- 2571. Operation of harbor or port and facilities, in general.
- 2572. Leases and licenses to use harbor premises or facilities.
- 2573. Anchorage, mooring, berthing, and movement of vessels.
- 2574. Fees, tolls, duties, and taxes.
- 2575. Registration and licensing of stevedores and longshoremen.
- 2576. Deposits of refuse.
- 2577. Penalties.
- 2578. Offenses.

4. NAVIGATION.

- 2580. In general.
- 2581. Existence and nature of navigational servitude or easement.
- 2582. Navigable waters as public highways.
- 2583. Effect of statutes or regulations on navigational servitude.
- 2584. Extent, width, or boundaries of navigational servitude.
- 2585. Purposes and manner of exercising rights of navigation, in general.
- 2586. Floatage of rafts or logs.
- 2587. Regulation of location, types, and manner of navigation activities.
- 2588. Rights and duties as between users of waters and riparian owners, in general.
- 2589. Rights and duties as between respective users of waters.
- 2590. Use of lake, river, or sea bed, incident to exercise of navigation rights, in general.
- 2591. Right of anchorage.
- 2592. Use of shores or banks, incident to exercise of navigation rights, in general.
- 2593. Prescriptive acquisition of rights beyond boundary of navigational easement.
- 2594. Discrimination in permitting access or use; residency.
- 2595. Fees, taxes, tolls, or other exactions as condition to exercise of navigation rights.

5. OBSTRUCTION OF NAVIGATION IN GENERAL, INJURY, AND REMEDIES.

- 2600. In general.
- 2601. Bridges.
- 2602. — In general.
- 2603. — Authority to construct and maintain, or to authorize construction and maintenance.
- 2604. — Bridges as nuisances.
- 2605. — Obstruction of navigation.
- 2606. — Injuries from collision with bridge.
- 2607. — Requiring alteration or removal of bridges.
- 2608. — Construction and operation of draws in general.

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XV. NAVIGABLE WATERS.(Cont'd)

- 2609. — Injuries from construction or operation of draws.
- 2610. — Repair of bridges.
- 2611. Booms.
- 2612. — In general.
- 2613. — Authority to construct or to authorize construction.
- 2614. — Injuries from construction or maintenance.
- 2615. — Booms as nuisances.
- 2616. Piers, dams, and cables.
- 2617. — In general.
- 2618. — Authority to construct and maintain, or to authorize construction and maintenance.
- 2619. — Construction and maintenance.
- 2620. — Obstruction of navigation.
- 2621. — Injuries from construction or maintenance.
- 2622. — Dams and piers as nuisances.
- 2623. — Injuries to dams, piers, cables, and locks.
- 2624. Obstruction by vessels, rafts, or logs.
- 2625. Obstruction by wrecks.
- 2626. Obstruction by deposits in channels.
- 2627. Obstruction or diversion of or into waters of navigable streams or lakes.
- 2628. Remedies for obstructions.
- 2629. — In general.
- 2630. — Injunction.
- 2631. — Abatement or removal.
- 2632. — Actions for damages.
 - (1). In general.
 - (2). Time to sue; laches.
 - (3). Parties and pleading.
 - (4). Trial or hearing.
 - (5). Evidence.
 - (6). Findings and verdict.
 - (7). Damages.
 - (8). Judgment or order.
- 2633. Criminal prosecutions for causing or maintaining obstructions.

6. PUBLIC USES OTHER THAN NAVIGATION.

- 2635. In general.
- 2636. Bathing.
- 2637. Travel over ice.

XV. NAVIGABLE WATERS.(Cont'd)

- 2638. Cutting and removing ice.
- 2639. Use of shores or banks.

7. SEWAGE AND POLLUTION.

- 2640. In general.

(C) LANDS UNDER WATER.

1. OWNERSHIP AND CONTROL IN GENERAL.

- 2645. In general.
- 2646. Ownership by state.
- 2647. — In general.
- 2648. — Federal paramountcy.
- 2649. — Rights incident to state's admission to Union in general.
- 2650. — Equal footing doctrine.
- 2651. — Title and rights held in public trust.
- 2652. — Historic title.
- 2653. — Effect of accretion and reliction.
- 2654. — Seaward boundaries of coastal states.
- 2655. — State compacts.
- 2656. — Determination of ownership.
- 2657. Private ownership in general.
- 2658. Land between high and low water marks, tidelands, flats, and foreshore.
- 2659. — In general.
- 2660. — Public trust.
- 2661. — Ordinary high water line or mark in general.
- 2662. — Low water mark.
- 2663. — Mean high tide line.
- 2664. — Effect on extent of navigational servitude.
- 2665. — Determination of high and low water lines in general.
- 2666. — Evidence.
- 2667. — Questions of fact.
- 2668. Possession, occupancy, and use.
- 2669. Trespass to submerged lands, and actions therefor.
- 2670. Partition or division of submerged lands.
- 2671. — In general.
- 2672. — Determination of boundaries.
- 2673. Proceedings for recovery of submerged lands.

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2. GRANTS TO AND ACQUISITION BY PRIVATE OWNERS OR MUNICIPALITIES.

- 2675. In general.
- 2676. Power to grant.
- 2677. To whom grant may be made.
- 2678. Construction of grants.
- 2679. — In general.
- 2680. — Title and rights of grantees in general.
- 2681. — Riparian grant as ownership interest in land.
- 2682. Forfeiture of grant.
- 2683. Leases; water bottom leases.
- 2684. Exchanging tidelands.
- 2685. Grant as incident to grant of riparian lands.
- 2686. Grants to counties, cities, or towns.

3. RECLAMATION AND IMPROVEMENT.

- 2690. In general.
- 2691. Right to reclaim or improve submerged lands in general.
- 2692. Nature of improvement or activity.
- 2693. — In general.
- 2694. — Dredging and filling.
- 2695. Permits and application therefor.
- 2696. — In general.
- 2697. — Necessity of permit.
- 2698. — Time for application.
- 2699. — Determination.
- 2700. — Judicial review.
- 2701. Actions.
- 2702. Abatement and injunction.
- 2703. Offenses and penalties.

XVI. DRAINAGE OF SWAMP OR LOWLANDS BY PUBLIC AUTHORITY.

(A) ESTABLISHMENT AND MAINTENANCE.

- 2705. In general.
- 2706. Right to establish and maintain in general.
- 2707. Constitutional and statutory provisions.
- 2708. — In general.
- 2709. — Validity and constitutionality of statutory provisions.
- 2710. — Repeal and retroactive operation of statutes.
- 2711. — Construction and operation.
- 2712. Purposes for which drains may be established.

XVI. DRAINAGE OF SWAMP OR LOWLANDS BY PUBLIC AUTHORITY.(Cont'd)

- 2713. — In general.
- 2714. — Improvement of land.
- 2715. — Promotion of public health or welfare.
- 2716. Establishment by public authorities.
- 2717. — In general.
- 2718. — By state.
- 2719. — By counties or other local authorities.
- 2720. — Contribution to expenses.
- 2721. — Appropriation of money.
- 2722. Drainage and reclamation districts and commissions.
- 2723. — In general.
- 2724. — Nature, creation, and incidents in general.
- 2725. — Proceedings for organization.
 - (1). In general.
 - (2). Petition, parties, and notice.
 - (3). Hearing and determination, and review.
 - (4). — In general.
 - (5). — Surveys, plans, and specifications.
 - (6). — Objections.
 - (7). — Hearing.
 - (8). — Determination.
 - (9). — Review or appeal.
 - (10). — Certiorari.
- 2726. — Collateral attack.
- 2727. — Territorial extent, annexation or inclusion of land, consolidation, and detachment.
 - (1). In general.
 - (2). Maps, surveys, boundaries, and description.
 - (3). Power and authority to annex.
 - (4). Petition, parties, and notice.
 - (5). Grounds for annexation.
 - (6). Objections.
 - (7). Hearing.
 - (8). Review or appeal.
 - (9). Consolidation of territories.
 - (10). Detachment or severance of territory.
 - (11). Particular cases.
- 2728. — Dissolution or other termination.
- 2729. — Commissioners and other officers.

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**XVI. DRAINAGE OF SWAMP OR LOWLANDS
BY PUBLIC AUTHORITY.(Cont'd)**

2730. — Powers and proceedings in general.
- (1). In general.
 - (2). Meetings and elections.
 - (3). Funding and assessments.
 - (4). Powers and duties.
2731. — Rights and liabilities in general.
2732. — Actions.
2733. Drainage companies.
2734. Establishment by landowners over lands of others.
2735. Establishment by agreement of landowners.
2736. Proceedings for establishment.
2737. — In general.
2738. — Jurisdiction.
2739. — Parties.
2740. — Petition for drain.
2741. — Bond.
2742. — Notice.
2743. — Remonstrances or answers to petition.
2744. — Appointment, proceedings, and report of commissioners or viewers; reports of surveyors and engineers.
2745. — Remonstrances or objections to report of commissioners or viewers.
2746. — Hearing and determination of questions.
2747. — Decisions and record.
2748. — Appeal.
- (1). In general.
 - (2). Nature and grounds of remedy, and appellate jurisdiction.
 - (3). Right of review and matters reviewable; standing.
 - (4). Requisites; time for proceedings; appeal bond.
 - (5). Review; presumptions; harmless error.
 - (6). Proceedings de novo and determination and disposition of cause.
 - (7). Subsequent appeals.
2749. — Review on certiorari.
2750. — Costs and expenses of proceedings.
2751. Actions to set aside proceeding.
2752. Collateral attack on proceedings.

**XVI. DRAINAGE OF SWAMP OR LOWLANDS
BY PUBLIC AUTHORITY.(Cont'd)**

2753. Restraining construction; petitions to suspend or cancel a drainage project or facility.
2754. Location.
2755. Mode and plan of construction.
2756. — In general.
2757. — Improvement of watercourse.
2758. Right of way and other interests in land; easements.
2759. Construction.
2760. — In general.
2761. — Allotment of work among landowners.
2762. — Contracts.
- (1). In general.
 - (2). Requisites and validity.
 - (3). Construction and operation.
 - (4). Modification and merger.
 - (5). Rescission, termination, and abandonment.
 - (6). Performance or breach.
 - (7). Actions.
2763. Improvement, extension, or alteration.
2764. — In general.
2765. — Petition, notice, and hearing.
2766. — Objections.
2767. — Funding and assessments.
2768. — Review or appeal.
2769. — Particular cases.
2770. Maintenance, cleaning, and repair.
2771. — In general; injunction.
2772. — Authority and duties.
2773. — Petition, notice, and hearing.
2774. — Funding and assessments.
2775. — Particular cases.
2776. — Allotment of work among landowners.
2777. — Contracts.
2778. Construction and maintenance of bridges and crossings.
2779. Damages or injuries from construction or maintenance.
2780. — In general.
2781. — Claims and assessment.
2782. — Flooding or flowing waters.
2783. — Appeal.
2784. — Particular cases.

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**XVI. DRAINAGE OF SWAMP OR LOWLANDS
BY PUBLIC AUTHORITY.**(Cont'd)

- 2785. — Deduction or set-off of benefits.
- 2786. Liabilities of district or landowners for expenses or damages.
- 2787. — In general.
- 2788. — Apportionment.
- 2789. Use of drain.
- 2790. Injuries from defects or obstructions.
- 2791. Injuries to drains.
- 2792. Offenses incident to construction, maintenance, or use.
- 2793. Vacation or abandonment of drains.

(B) ASSESSMENTS AND SPECIAL TAXES.

- 2800. In general.
- 2801. Power to levy in general.
- 2802. Constitutional and statutory provisions.
- 2803. Purposes of levy or assessment.
- 2804. Amount of tax or assessment.
- 2805. Property liable.
- 2806. Benefit to property.
- 2807. Classification of property.
- 2808. Grounds of objection.
- 2809. Estoppel or waiver as to objections.
- 2810. Levy of tax.
- 2811. Proceedings for assessment; notice.
- 2812. — In general.
- 2813. — Time for proceedings.
- 2814. — Notice and hearing.
- 2815. — Surveys, plans, and specifications.
- 2816. Mode of assessment.
- 2817. — In general.
- 2818. — Apportionment of benefits and expenses.
- 2819. Certificate for work done against specific property.
- 2820. Proceeding to confirm or establish validity.
- 2821. Review, correction, or setting aside of assessment.
- 2822. — In general.
- 2823. — Conclusiveness of assessment and review thereof in general.
- 2824. — Collateral attack on assessment.
- 2825. — Appeal and error.
- 2826. — Certiorari to review assessment.
- 2827. — Proceedings to correct assessment or determine objections thereto.
- 2828. Reassessment or additional assessment.

**XVI. DRAINAGE OF SWAMP OR LOWLANDS
BY PUBLIC AUTHORITY.**(Cont'd)

- 2829. Lien.
- 2830. Payment, and recovery of assessment paid.
- 2831. Penalties for nonpayment.
- 2832. Collection, enforcement, and sale or other disposition.
- 2833. — In general.
- 2834. — Collection procedures in general.
- 2835. — Enforcement in general.
- 2836. — Summary remedies.
- 2837. — Location of property.
- 2838. — Disposition of funds collected.
- 2839. — Actions.
 - (1). In general.
 - (2). Notice.
 - (3). Parties.
 - (4). Maps, plans, and surveys.
 - (5). Hearing or trial.
 - (6). Evidence.
 - (7). Findings and determination.
 - (8). Fees, costs, and interest.
 - (9). Appeal.
- 2840. Remedies for wrongful enforcement.

**XVII. LEVEES AND FLOOD CONTROL
THROUGH PUBLIC WORKS.**

- 2850. In general.
- 2851. Power to establish and maintain in general.
- 2852. Constitutional and statutory provisions.
- 2853. — In general.
- 2854. — Purpose.
- 2855. — Validity.
- 2856. — Construction and operation.
- 2857. — Retroactivity and repeal.
- 2858. Establishment by state.
- 2859. Districts, boards, and officers; soil conservation district.
- 2860. — In general.
- 2861. — Nature, creation, and incidents in general.
- 2862. — Proceedings for organization.
- 2863. — Territorial extent of districts; annexation, detachment, and consolidation.
- 2864. — Appointment, qualification, and tenure of officers.

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XVII. LEVEES AND FLOOD CONTROL THROUGH PUBLIC WORKS.(Cont'd)

- 2865. — Powers and proceedings in general.
 - al.
 - (1). In general.
 - (2). Meetings and elections.
 - (3). Fiscal matters.
 - (4). Powers and duties.
- 2866. — Rights and liabilities in general.
- 2867. — Actions.
- 2868. — Dissolution.
- 2869. Proceedings for establishment.
- 2870. Location.
- 2871. Acquisition of land or rights therein; easements and rights of way.
- 2872. Construction.
- 2873. — In general.
- 2874. — Contracts.
 - (1). In general.
 - (2). Requisites and validity.
 - (3). Construction and operation.
 - (4). Modification and merger.
 - (5). Termination, rescission, and abandonment.
 - (6). Performance or breach.
 - (7). Actions.
- 2875. — Implied warranties.
- 2876. Improvement, extension, or alteration.
- 2877. Maintenance and repair.
- 2878. — In general.
- 2879. — Contracts.
- 2880. Damages from construction or maintenance.
- 2881. — In general.
- 2882. — Construction.
- 2883. — Maintenance.
- 2884. — Personal injuries.
- 2885. — Immunity.
- 2886. Liabilities for expenses and damages.
- 2887. Assessments and special taxes.
- 2888. — In general.
- 2889. — Property liable.
- 2890. — Exemptions.
- 2891. — Levy and assessment.
 - (1). In general.
 - (2). Benefits and assessments.
 - (3). Notice.
 - (4). Proceedings.

XVII. LEVEES AND FLOOD CONTROL THROUGH PUBLIC WORKS.(Cont'd)

- (5). Review or appeal.
- 2892. — Particular cases.
- 2893. — Payment, and recovery of assessments paid.
- 2894. — Collection and enforcement in general.
- 2895. — Liens.
- 2896. — Sale of land for nonpayment.
 - (1). In general.
 - (2). Proceedings to effect sale.
 - (3). Redemption.
 - (4). Confirmation.
 - (5). Opening or vacating, and collateral attack.
- 2897. — Remedies for wrongful enforcement.
- 2898. — Disposition of proceeds.
- 2899. District or other levee funds, debts, and securities.
- 2900. — In general.
- 2901. — Indebtedness and expenditures in general.
- 2902. — Funds, and administration thereof in general.
- 2903. — Warrants, orders, and payments.
- 2904. — Bonds and other securities.
- 2905. Injuries to levees or works.
- 2906. Injuries from defects.
- 2907. — In general.
- 2908. — Breaches, flooding, and overflow.
- 2909. — Personal injuries.
- 2910. — Immunity.
- 2911. Offenses.

XVIII. CANALS FOR NAVIGATIONAL USE.

(A) ESTABLISHMENT, CONSTRUCTION, AND MAINTENANCE.

- 2920. In general.
- 2921. Right to establish and maintain in general.
- 2922. Character of canal as highway.
- 2923. Constitutional and statutory provisions.
- 2924. Establishment by state or United States.
- 2925. — In general.
- 2926. — State officers and agents.
- 2927. Canal companies.

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**XVIII. CANALS FOR NAVIGATIONAL
USE.(Cont'd)**

- 2928. — In general.
- 2929. — Incorporation and organization.
- 2930. — Franchises, privileges, and powers.
- 2931. — Public aid.
- 2932. — Actions.
- 2933. Location.
- 2934. Right of way and other interests in land.
- 2935. — In general.
- 2936. — Purchase or other acquisition, and nature of title and estate acquired.
- 2937. — Description and uses of canal lands.
- 2938. Acquisition of water sources and rights incident thereto.
- 2939. Construction.
- 2940. — In general.
- 2941. — Contracts.
 - (1). In general.
 - (2). Requisites and validity.
 - (3). Contractors' bonds.
 - (4). Construction and operation.
 - (5). Modification and merger.
 - (6). Rescission, termination, and abandonment.
 - (7). Performance or breach.
 - (8). Actions.
- 2942. Maintenance and repair.
- 2943. Construction and maintenance of bridges, ferries, and tunnels.
- 2944. — In general.
- 2945. — Authority and duty to build.
- 2946. — Operation.
- 2947. — Maintenance.
- 2948. — Grant of right of way over canal lands to third parties.
- 2949. Injuries from construction or maintenance.
- 2950. — In general.
- 2951. — Injuries arising from canal operations in general.
- 2952. — Overflow, seepage, and flooding.
- 2953. — Personal injury.
- 2954. — Actions in general.
- 2955. — Damages.

**XVIII. CANALS FOR NAVIGATIONAL
USE.(Cont'd)**

- 2956. Penalties for failure to construct or maintain canal or bridge.
- 2957. Sale, lease, and transfer of canal.
- 2958. Mortgages.
- 2959. Duration, abandonment or other termination, and reversion.
- 2960. Injuries to canals, works, or appliances.
- 2961. Offenses incident to construction and maintenance.

(B) REGULATION AND OPERATION.

- 2970. Power to control and regulate.
- 2971. Mode of operation.
- 2972. Tolls.
- 2973. Sale or lease of water.
- 2974. Injuries incident to navigation.
- 2975. — In general.
- 2976. — Hazards and obstructions to navigability.
- 2977. — Negligence.
- 2978. — Strict liability.
- 2979. Actions.
- 2980. — In general.
- 2981. — Damages.

XIX. WEATHER MODIFICATION.

- 2990. In general.
- 2991. Statutory provisions.

406. WEAPONS

SUBJECTS INCLUDED

- Right to bear arms in self-defense or in defense of the state
- Regulation of manufacture, dealing in, and use of weapons
- Liabilities for injuries therefrom caused by negligence
- Offenses of having or carrying weapons concealed or in any other manner prohibited, pointing or shooting firearms, etc., not constituting any other distinct offense

406. WEAPONS

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Militia, matters relating to, see MILITIA

Premises liability cases involving injuries caused by shooting, where the alleged negligence is not directly related to the weapon itself, see NEGLIGENCE ¶1160 and related lines in that topic

Specific injuries or crimes committed by use of weapons, see ASSAULT AND BATTERY, HOMICIDE, ROBBERY, and other specific topics

Tort liability of manufacturers, distributors, and others for defects or dangers in weapons or parts thereof, see PRODUCTS LIABILITY

Use of a weapon as a sentencing factor, see SENTENCING AND PUNISHMENT

I. IN GENERAL, ¶101-119.

II. LICENSING OF DEALERS, MANUFACTURERS, AND IMPORTERS, ¶120-129.

III. REGISTRATION, LICENSES, OR PERMITS OF OWNERS AND PURCHASERS, ¶130-144.

IV. OFFENSES, ¶145-219.

(A) IN GENERAL, ¶145.

(B) MANUFACTURE, SALE, OR TRANSFER, ¶146-159.

(C) POSSESSION, USE, CARRYING, OR PERSONAL TRANSPORT, ¶160-219.

V. PROSECUTION, ¶220-349.

(A) IN GENERAL, ¶220.

(B) INDICTMENT OR INFORMATION, ¶221-239.

(C) PRESUMPTIONS AND BURDEN OF PROOF, ¶240-259.

(D) ADMISSIBILITY OF EVIDENCE, ¶260-279.

(E) WEIGHT AND SUFFICIENCY OF EVIDENCE, ¶280-299.

(F) QUESTIONS FOR JURY, ¶300-319.

(G) INSTRUCTIONS, ¶320-339.

(H) SENTENCE AND PUNISHMENT, ¶340-349.

VI. FORFEITURES AND PENALTIES, ¶350-359.

VII. CIVIL LIABILITIES FOR NEGLIGENT USE OR ENTRUSTMENT, ¶360-368.

I. IN GENERAL.

101. In general.

102. Constitutional, statutory, and regulatory provisions.

103. — In general.

104. — Power to regulate.

105. — Purpose.

106. — Validity.

Certainty, definiteness, vagueness, and overbreadth, see CONSTITUTIONAL LAW.

(1). In general.

(3). Violation of right to bear arms.

(4). Violation of other rights or provisions.

107. — Construction.

(1). In general.

(2). Right to bear arms in general.

(3). Definitions.

(4). What guns are allowed.

(5). Right as individual or collective; militia requirement.

108. — Retroactive operation.

109. Weapons or objects affected; definitions.

110. — In general.

111. — Dangerous or deadly weapons in general.

112. — Firearms in general.

(1). In general.

(2). Pistols and handguns.

(3). Rifles and shotguns.

(4). Automatic or semi-automatic weapons.

(5). Modified weapons.

(6). Operability.

113. — Knives, swords; objects used to cut or stab.

114. — Clubs, bats; objects used to beat.

115. — Other miscellaneous objects.

II. LICENSING OF DEALERS, MANUFACTURERS, AND IMPORTERS.

120. In general.

121. Application.

122. Grounds for grant or denial of license.

123. Proceedings.

124. Duties and liabilities of licensee.

125. Record-keeping and background checks.

406. WEAPONS

**II. LICENSING OF DEALERS,
MANUFACTURERS, AND
IMPORTERS.(Cont'd)**

- 126. Revocation, non-renewal.
- 127. Judicial review.

**III. REGISTRATION, LICENSES, OR PERMITS
OF OWNERS AND PURCHASERS.**

- 130. In general.
- 131. Application.
- 132. Registration of guns.
- 133. License to own or possess gun; owner identification cards.
- 134. Permits to carry guns.
- 135. Revocation, non-renewal.
- 136. Judicial review.

IV. OFFENSES.

(A) IN GENERAL.

- 145. In general.

(B) MANUFACTURE, SALE, OR TRANSFER.

- 146. In general.
- 147. Dealing without license.
- 148. Prohibited transfers.
- 149. Prohibited weapons/ammunition.
- 150. Records.
- 151. Transportation.
- 152. Interstate and foreign commerce.
- 153. False statements to dealers.
- 154. Chemical and biological weapons.
- 155. Attempts.
- 156. Defenses.
- 157. Parties to crime; aiding and abetting.

**(C) POSSESSION, USE, CARRYING,
OR PERSONAL TRANSPORT.**

- 160. In general.
- 161. Interstate or foreign commerce.
- 162. Possession and carrying in general.
- 163. — In general.
- 164. — Possessory crimes in general.
- 165. — What constitutes carrying.
- 166. — What constitutes possession.
- 167. — Constructive possession.
- 168. — Concealment.
- 169. — Knowledge, intent.
- 170. Possession or carrying without a license.
- 171. Place.

IV. OFFENSES.(Cont'd)

- 172. Vehicles.
- 173. Possession after conviction of crime.
- 174. — In general.
- 175. — Elements of offense in general.
- 176. — Miscellaneous particular issues.
- 177. — Possession.
- 178. — Validity of prior conviction.
- 179. — Degree, scope, or nature of prior offense in general.
- 180. — Particular offenses.
 - (1). In general.
 - (2). Particular felonies.
 - (3). Domestic violence.
- 181. — Time considerations.
- 182. — Effect of subsequent circumstances.
- 183. Possession by chemically dependent or mentally disabled persons.
- 184. Other individuals prohibited from possession.
- 185. Manner of use.
- 186. — In general.
- 187. — Pointing, exhibiting, or brandishing.
- 188. — Shooting or discharging.
 - (1). In general.
 - (2). Intent.
 - (3). At or into vehicle.
 - (4). At or into dwelling.
- 189. Use or possession during and in relation to commission of crime.
- 190. — In general.
- 191. — Possession.
- 192. — Furtherance; nexus.
- 193. — Using, carrying, brandishing, or discharge.
- 194. — Crime at issue.
 - (1). In general.
 - (2). Crimes of violence.
 - (3). Controlled substances.
 - (4). Other particular crimes.
- 195. Chemical and biological weapons.
- 196. Degrees.
- 197. Attempts.
- 198. Defenses in general; justification or excuse.
- 199. — In general.

406. WEAPONS

IV. OFFENSES.(Cont'd)

- 200. — Innocent possession; intent, knowledge.
- 201. — Transitory possession.
- 202. — Self-protection or necessity.
- 203. — Persons or places exempted.
 - (1). In general.
 - (2). Private property.
 - (3). Law enforcement officers and security guards.
- 204. Parties to crime; aiding and abetting.

V. PROSECUTION.

(A) IN GENERAL.

- 220. In general.

(B) INDICTMENT OR INFORMATION.

- 221. In general.
- 222. Requisites and sufficiency in general.
- 223. Description of weapon.
- 224. Manufacture, sale, transfer.
- 225. Possession, use, carrying.
- 226. — In general.
- 227. — Manner of use.
- 228. — Possession after conviction of crime.
- 229. — Transportation; interstate commerce.
- 230. — Use or possession in commission of crime.
- 231. — Intent, knowledge, purpose.
- 232. Issues, proof, and variance.

(C) PRESUMPTIONS AND BURDEN OF PROOF.

- 240. In general.
- 241. Weapons prohibited.
- 242. Manufacture, sale, transfer.
- 243. Possession, use, carrying.
- 244. — In general.
- 245. — Constructive possession.
- 246. — Manner of use.
- 247. — Possession after conviction of crime.
- 248. — Use or possession in commission of crime.
- 249. — Intent, knowledge, purpose.
- 250. — Defenses.

(D) ADMISSIBILITY OF EVIDENCE.

- 260. In general.
- 261. Weapons prohibited.
- 262. Manufacture, sale, transfer.
- 263. Possession, use, carrying.
- 264. — In general.
- 265. — Constructive possession.
- 266. — Possession after conviction of crime; prior convictions.
- 267. — Use or possession in commission of crime.
- 268. — Intent, knowledge, purpose.
- 269. — Defenses.

(E) WEIGHT AND SUFFICIENCY OF EVIDENCE.

- 280. In general.
- 281. Weapons prohibited.
- 282. Manufacture, sale, transfer.
- 283. — In general.
- 284. — Dealing without a license.
- 285. — Prohibited sales and weapons.
- 286. — Interstate or foreign commerce.
- 287. — False statements to dealers.
- 288. — Defenses.
- 289. Possession, use, carrying.
- 290. — In general.
- 291. — Possession or carrying.
 - (1). In general.
 - (2). Constructive possession in general.
 - (3). Possessory crimes in general.
 - (4). Place; vehicles.
 - (5). Possession or carrying without license.
 - (6). Possession under a disability other than prior conviction.
 - (7). Concealment; carrying concealed weapons.
- 292. — Manner of carrying or use.
- 293. — Possession after conviction of crime.
 - (1). In general.
 - (2). Interstate connection.
 - (3). Possession.
 - (4). Existence or eligibility of prior conviction.
- 294. — Use or possession in commission of crime.
 - (1). In general.
 - (2). Interstate connection.

407. WEIGHTS AND MEASURES

V. PROSECUTION.(Cont'd)

- (3). Possession.
- (4). Underlying crime.
- (5). Use and manner of use.
- (6). Furtherance; nexus.
- 295. — Defenses and exemptions.
- 296. — Parties to crime; aiding and abetting.
- 297. — Attempts.

(F) QUESTIONS FOR JURY.

- 300. In general.
- 301. Weapons prohibited.
- 302. Manufacture, sale, gift, loan, receipt, transfer.
- 303. Possession, use, carrying.
- 304. — In general.
- 305. — Constructive possession.
- 306. — Manner of use or carrying.
- 307. — Possession after conviction of crime.
- 308. — Use or possession in commission of crime.
- 309. — Intent, knowledge, purpose.
- 310. — Defenses.

(G) INSTRUCTIONS.

- 320. In general.
- 321. Weapons prohibited.
- 322. Manufacture, sale, transfer.
- 323. Possession, use, carrying.
- 324. — In general.
- 325. — What is possession; constructive possession.
- 326. — Manner of carrying or use.
- 327. — Possession after conviction of crime.
- 328. — Use or possession in commission of crime.
- 329. — Intent, knowledge, purpose.
- 330. — Defenses and exemptions.

(H) SENTENCE AND PUNISHMENT.

- 340. In general.
- 341. Manufacture, sale, transfer.
- 342. Possession, use, carrying, or transportation.
- 343. Possession after conviction of crime.

V. PROSECUTION.(Cont'd)

- 344. Use or possession in commission of a crime.

VI. FORFEITURES AND PENALTIES.

- 350. In general.
- 351. Forfeiture or return of weapon.
- 352. Proceedings.

VII. CIVIL LIABILITIES FOR NEGLIGENT USE OR ENTRUSTMENT.

- 360. In general.
- 361. Negligent handling or use.
- 362. Negligent storage; failure to prevent theft.
- 363. Negligent entrustment.
- 364. Actions.
- 365. — In general.
- 366. — Evidence.
- 367. — Questions of law or fact.
- 368. — Instructions.

407. WEIGHTS AND MEASURES

SUBJECTS INCLUDED

Standards of quantity established by public authority
Enforcement of application of such standards to sales and other transactions in general

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Miners, weighing requirements for protection of, see LABOR AND EMPLOYMENT

- 1. Power to regulate.
- 2. Constitutional and statutory provisions.
- 3. Systems and standards in general.
- 5. Regulations of sales of particular articles.
- 6. Conformity to standards and regulations in general.
- 7. Inspection and sealing.
- 8. Public weighers, measurers, or surveyors.
- 9. Use of unauthorized weights or measures.
- 10. Use of false weights or measures.

407. WEIGHTS AND MEASURES

11. Penalties, and forfeitures, and actions therefor.
12. Criminal prosecutions.

408. WHARVES

SUBJECTS INCLUDED

Construction, maintenance, regulation and use of wharves, landings, piers, and docks for the landing of vessels, whether constructed under franchises granted therefor or directly by the government, and whether use be subject to payment of wharfage or other fees or free

Organization, franchises, and powers of wharf or dock companies

Rights, duties and liabilities of such companies or of municipalities in respect of the management and use of their wharves, piers, or docks

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Corporations in general, matters applicable to, see CORPORATIONS AND BUSINESS ORGANIZATIONS

Eminent domain, exercise of power of, see EMINENT DOMAIN

Municipalities, establishment, operation, and regulation or grant of franchise, see MUNICIPAL CORPORATIONS

Riparian or littoral proprietors, rights and liabilities, see WATER LAW

Warehousemen, liabilities of wharfingers as, see WAREHOUSEMEN

1. Right to establish and maintain.
3. Statutory regulations.
4. What constitutes a wharf, dock, or pier.
5. Establishment by public authorities.
7. Grants, franchises, and privileges.
8. Construction, maintenance, and repair.
9. Sale, lease, and transfer.
10. Mode and purpose of use.
12. Supervision by public officers.
13. Management and conduct of business.
15. Wharfage.

16. — In general.
17. — Amount.
18. — Lien.
19. — Actions.
20. Injuries to vessels or cargoes.
 - (.5). In general.
 - (1). Duties and liabilities of wharfingers in general.
 - (2). Concealed defects, obstructions, or dangers.
 - (3). Condition of and defects or obstructions in channels, approaches and entrances to wharf, and in waters and beds alongside.
 - (4). Moorings and fastenings.
 - (5). Contributory negligence.
 - (6). Persons liable.
 - (7). Actions.
21. Personal injuries.
22. Injuries to wharves.
23. Penalties for violations of regulations.

409. WILLS

SUBJECTS INCLUDED

Instruments in writing making dispositions of property to take effect at death

Nature, requisites, validity, incidents, construction, operation and effect of such instruments

Evidence relating thereto

Probate, establishment, and contest thereof

Estates or interests created, and conditions or restrictions imposed thereon

Rights and liabilities of devisees and legatees

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Executors and administrators with will annexed, etc., designation, appointment, rights, powers, duties, and liabilities, see EXECUTORS AND ADMINISTRATORS

Gifts in expectation of death, see GIFTS

409. WILLS

Intestacy, effect of, see DESCENT AND DISTRIBUTION

Perpetuities or trusts for accumulations, restrictions on creation of, see PERPETUITIES

Taxes affecting legacy, succession or estate, see TAXATION, INTERNAL REVENUE

I. NATURE AND EXTENT OF TESTAMENTARY POWER, ¶1-20.

II. TESTAMENTARY CAPACITY, ¶21-55.

III. CONTRACTS TO DEVISE OR BEQUEATH, ¶56-68.

IV. REQUISITES AND VALIDITY, ¶69-202.

(A) NATURE AND ESSENTIALS OF TESTAMENTARY DISPOSITIONS, ¶69-93.

(B) FORM AND CONTENTS OF INSTRUMENTS, ¶94-107.

(C) EXECUTION, ¶108-129.

(D) HOLOGRAPHIC WILLS, ¶130-135.

(E) NUNCUPATIVE WILLS, ¶136-150.

(F) ASSENT OF TESTATOR, ¶151-166.

(G) REVOCATION, ¶167-195.

(H) REVIVAL, ¶196-202.

V. PROBATE OR CONTEST OF WILL, ¶203-434.

(A) PROBATE IN GENERAL, ¶203-221.

(B) ACTIONS TO ESTABLISH OR DETERMINE VALIDITY IN GENERAL, ¶222-230.

(C) PROBATE OR ESTABLISHMENT OF LOST OR DESTROYED WILLS, ¶231-237.

(D) PROBATE OR RECORD OF FOREIGN WILLS, ¶238-246.

(E) JURISDICTION, ¶247-257.

(F) VENUE, ¶258.

(G) TIME FOR PROBATE OR CONTEST, ¶259-261.

(H) PARTIES, ¶262-268.

(I) NOTICE, ¶269.

(J) PROCESS, ¶270.

(K) APPEARANCE, ¶271.

(L) PETITIONS, OBJECTIONS, AND PLEADING, ¶272-286.

(M) EVIDENCE, ¶287-306.

(N) HEARING OR TRIAL, ¶307-337.

(O) JUDGMENT OR DECREE, ¶338-355.

(P) REVIEW, ¶356-401.5.

V. PROBATE OR CONTEST OF WILL —Cont'd

(Q) FEES AND COSTS, ¶402-416.

(R) OPERATION AND EFFECT, ¶417-434.

VI. CONSTRUCTION, ¶435-707.

(A) GENERAL RULES, ¶435-491.

(B) DESIGNATION OF DEVISEES, AND LEGATEES AND THEIR RESPECTIVE SHARES, ¶492-535.

(C) DEATH OF DEVISEE OR LEGATEE, ¶536-557.

(D) DESCRIPTION OF PROPERTY, ¶558-589.

(E) NATURE OF ESTATES AND INTERESTS CREATED, ¶590-627.

(F) VESTED OR CONTINGENT ESTATES AND INTERESTS, ¶628-638.

(G) CONDITIONS AND RESTRICTIONS, ¶639-668.

(H) ESTATES IN TRUST AND POWERS, ¶669-694.

1. CREATION OF TESTAMENTARY TRUSTS, ¶669-679.

2. CONSTRUCTION OF TESTAMENTARY TRUSTS, ¶680-688.

3. TESTAMENTARY POWERS, ¶689-694.

(I) ACTIONS TO CONSTRUE WILLS, ¶695-707.

VII. RIGHTS AND LIABILITIES OF DEVISEES AND LEGATEES, ¶708-872.

(A) NATURE OF TITLE AND RIGHTS IN GENERAL, ¶708-749.

(B) CONSTRUCTION OF DEVISES AND BEQUESTS IN GENERAL, ¶750.

(C) SPECIFIC DEVISES, ¶751-752.

(D) SPECIFIC BEQUESTS, ¶753-754.

(E) DEMONSTRATIVE BEQUESTS, ¶755.

(F) GENERAL BEQUESTS, ¶756.

(G) ADVANCEMENTS, ¶757-763.

(H) ADEMPION, ¶764-771.

(I) SATISFACTION, ¶772-773.

(J) LAPSE, ¶774-777.

(K) ELECTION, ¶778-803.

(L) ABATEMENT, ¶804-818.

(M) LEGACIES CHARGED ON PROPERTY, ESTATE OR INTEREST, ¶819-826.

(N) DEBTS OF TESTATOR AND INCUMBRANCES ON PROPERTY, ¶827-848.

409. WILLS

- VII. RIGHTS AND LIABILITIES OF DEVISEES AND LEGATEES—Cont'd
- (O) VOID, LAPSED, AND FORFEITED DEVISES AND BEQUESTS, AND PROPERTY AND INTERESTS UNDISPOSED OF, §§849-866.
- (P) RIGHTS AND REMEDIES OF CREDITORS OF DEVISEES AND LEGATEES, §§867-872.

I. NATURE AND EXTENT OF TESTAMENTARY POWER.

1. Nature of power.
2. What law governs.
3. Constitutional and statutory provisions.
4. Property and rights subject to testamentary disposition.
5. — In general.
6. — Ownership and possession.
 - (1). In general.
 - (2). Life insurance policies and proceeds.
 - (3). Property owned in joint tenancy or tenancy by entirety.
 - (4). Partnership interests.
 - (5). Community property.
7. — Future and contingent estates or interests.
8. — After-acquired property.
9. Objects of testamentary disposition in general.
10. Capacity to take by devise or bequest.
11. Restrictions on disposition by testator leaving children, parents, husband, or wife.
12. Restrictions on devises and bequests for charitable or religious purposes.
13. — In general.
 - (1). In general.
 - (2). Devises and bequests within statute.
 - (3). Persons entitled to question validity of devise or bequest.
 - (4). Waiver or confirmation by heirs.
14. — Corporations and persons to whom applicable.
15. — Amount or portion of estate.
16. — Time of execution of will.
17. Restrictions on gifts between persons living in adultery or cohabitation, or to children born out-of-wedlock.

I. NATURE AND EXTENT OF TESTAMENTARY POWER.(Cont'd)

18. Illegality of object or purpose.
19. Mode and form of disposition.
20. Tenure, estate, or interest which may be created.

II. TESTAMENTARY CAPACITY.

21. Nature and measure in general.
22. What law governs.
23. Statutory provisions.
24. Personal disabilities in general.
25. Indians.
26. Infants.
27. Married women.
28. — In general.
29. — Separate property.
30. — Rights of husband.
31. Degree of mental capacity.
32. Degree of memory.
33. Insane persons.
34. — In general.
35. — Effect of adjudications as to mental incapacity and guardianship.
36. — Mental unsoundness in general.
37. — Lucid intervals.
38. — Insane delusions or monomania.
 - (1). In general.
 - (2). Influence on testamentary disposition.
 - (3). Delusions respecting members of family or heirs at law.
40. Peculiar belief or opinion.
41. Eccentricity.
42. Delirium of disease or other temporary mental incapacity.
43. Use and effect of drugs.
44. Intoxication and delirium tremens.
45. Illness or debility.
46. Persons in extremis.
47. Old age in general.
- 47.5. Alzheimer's disease, senile dementia, or mental decay.
48. Persons deaf, mute, or blind.
49. Illiterate persons.
50. Sufficiency of testator's understanding as to his property, persons to whom it may be given, and mode of disposition.
51. Evidence.

409. WILLS

II. TESTAMENTARY CAPACITY.(Cont'd)

- 51.1. — In general.
- 52. — Presumptions and burden of proof.
 - (1). In general.
 - (2). Unequal, unjust, or unnatural disposition.
 - (3). Prior or habitual mental incapacity and lucid intervals.
 - (4). Adjudication as to mental incapacity and guardianship.
 - (5). Delusions and monomania.
 - (6). Physical condition and mental incapacity arising therefrom.
 - (7). Alzheimer's disease, senile dementia, or mental decay.
- 53. — Admissibility in general.
Expert opinion evidence, see EVIDENCE XII.
 - (1). In general.
 - (2). Mental condition prior or subsequent to execution of will.
 - (3). Adjudication as to mental incapacity and guardianship.
 - (4). Hereditary insanity.
 - (5). Insane delusions, monomania, and peculiar belief or opinion.
 - (6). Physical conditions and mental incapacity arising therefrom.
 - (7). Habits and reputation.
 - (8). Transaction of business.
 - (9). Unequal, unjust, or unnatural disposition.
- 54. — Conduct and declarations of testator.
 - (1). In general.
 - (2). Conduct of testator toward friends and relatives.
 - (3). Declarations and inclinations of testator respecting disposition of property.
 - (4). Declarations of testator as to capacity.
 - (5). Execution of other wills.
- 55. — Weight and sufficiency.
 - (1). In general.
 - (2). Prior or habitual mental incapacity and lucid intervals.
 - (3). Insane delusions and monomania.
 - (4). Peculiar belief or opinion and eccentricity.

II. TESTAMENTARY CAPACITY.(Cont'd)

- (5). Physical condition and mental incapacity arising therefrom in general.
- (6). Intoxication, habitual drunkenness, and use of drugs.
- (7). Old age and accompanying physical and mental weakness in general.
- (7.1). Alzheimer's disease, senile dementia, or mental decay.
- (8). Suicide by testator.
- (9). Understanding as to property.
- (10). Mode of disposition of property and conduct as to relatives.
- (11). Transaction of business and management of property.
- (12). Adjudication as to mental incapacity and guardianship.
- (13). Testimony of attesting witnesses.

III. CONTRACTS TO DEVISE OR BEQUEATH.

- 56. Nature of obligation.
- 57. What law governs.
- 58.5. Making, requisites, and validity in general.
 - (1). In general.
 - (2). Oral contracts, necessity of writing, and statute of frauds.
 - (3). Consideration.
 - (4). Evidence of existence of contract in general.
 - (5). Presumptions and burden of proof.
 - (6). Admissibility.
 - (7). Degree of proof.
 - (8). Weight and sufficiency.
- 60. Antenuptial agreements.
- 61. Agreements as to mutual wills.
- 62. Joint or mutual wills as contracts.
- 63. Construction and operation.
- 64. Modification, rescission, or abandonment.
- 65. Conveyances to defeat rights under contract.
- 66. Performance or breach.
- 67. Rights and remedies on breach in general.
- 68. Actions for breach.

409. WILLS

IV. REQUISITES AND VALIDITY.

(A) NATURE AND ESSENTIALS OF TESTAMENTARY DISPOSITIONS.

69. Nature of will in general.
70. What law governs.
71. Statutory provisions.
72. Testamentary intent.
73. Disposition of property in general.
74. Partial disposition of estate.
75. Execution of powers.
76. Instrument making no disposition of property.
77. Time of taking effect.
78. Ambulatory character, and revocability.
80. Conditional or contingent will.
81. Validity and sufficiency of provisions of will in general.
82. Unjust or unnatural disposition.
83. Necessity for appointment of executor and provision for administration.
84. Instructions for and preparation of instrument.
85. Advice or suggestions of counsel, scrivener, notary, or others.
86. Will distinguished from other dispositions of property.
87. — In general.
88. — Deed or other conveyance or contract.
 - (5). In general.
 - (1). Nature and form of instrument in general.
 - (2). Time of taking effect in general.
 - (3). Reservation of use and enjoyment.
 - (4). Delivery of instrument.
 - (5). Contract to devise or bequeath.
 - (6). Support or maintenance of grantor.
 - (7). Subsequent acts or conduct of parties.
 - (8). Lease.
89. — Note, bond, or order for payment of money.
90. — Gift.
91. — Trust or power.
92. Instrument operating as will and also as deed or contract.
93. Evidence as to character of transaction or instrument.

(B) FORM AND CONTENTS OF INSTRUMENTS.

94. Necessity and sufficiency of writing in general.
95. Necessity of instrument under seal.
96. Form of instrument in general.
97. Separate instruments.
98. Reference to other writings.
99. Codicils.
100. Joint and mutual wills.
101. Recitals.
102. Technical words of disposition.
103. Certainty.
104. — In general.
105. — Designation and description of devisees and legatees.
106. — Description of property.
107. Erasures and interlineations.

(C) EXECUTION.

108. Mode and requisites in general.
109. Knowledge of testator as to contents.
110. Date.
111. Signature or subscription by or for testator.
 - (5). In general.
 - (1). Necessity and sufficiency in general.
 - (2). Location of signature on instrument.
 - (3). Signing by mark and writing of signature by other person.
 - (4). Assistance in making signature.
 - (5). Time of making signature.
112. Seal.
113. Attestation and subscription by witnesses.
 - 113.1. — In general.
114. — Necessity and nature in general.
115. — Number of witnesses.
116. — Competency of witnesses.
 - (1). In general.
 - (2). Notary.
 - (3). Interest of witness in general.
 - (4). Executors.
 - (5). Attorneys.
117. — Presence of testator and witnesses.
118. — Subscription or acknowledgment of testator in presence of witnesses.

409. WILLS

IV. REQUISITES AND VALIDITY.(Cont'd)

- 119. — Publication or declaration, and knowledge of witnesses as to nature or contents of instrument.
- 120. — Request to witnesses.
- 121. — Attestation clause.
- 122. — Noting erasures and interlineations.
- 123. — Subscription by witnesses.
 - (5). In general.
 - (1). Mode and sufficiency in general.
 - (2). Attestation by mark and writing of signature by other person.
 - (3). Location of signatures on instrument.
 - (4). Time of attestation.
 - (5). Presence of testator and witnesses.
- 124. Making, sealing up, and superscription of mystic or sealed testament.
- 125. Codicils.
- 126. Deposit or filing for safe-keeping.
- 127. — In general.
- 128. — Custody during life of testator.
- 129. — Disposition on death of testator.

(D) HOLOGRAPHIC WILLS.

- 130. Nature and requisites in general.
- 131. Statutory provisions.
- 132. Handwriting of testator.
- 133. Execution.
- 134. Informal or defectively executed instrument as holograph.
- 135. Deposit, custody, and production.

(E) NUNCUPATIVE WILLS.

- 136. Nature and requisites in general.
- 137. Statutory provisions.
- 138. Property which may be disposed of.
- 139. Persons who may make.
- 140. Circumstances and occasion of making.
- 141. Making, validity, and sufficiency of disposition.
- 142. Attestation.
- 143. — In general.
- 144. — Number and competency of witnesses.
- 145. — Request to witnesses.
- 146. Reduction to writing.
- 147. Making, reading, and signing of nuncupative or open testament.

IV. REQUISITES AND VALIDITY.(Cont'd)

- 147.1. — In general.
 - 148. — Public act.
 - 149. — Private act.
 - 150. Informal or defectively executed instrument as nuncupative will.
- (F) ASSENT OF TESTATOR.**
- 151. Reality of assent of testator in general.
 - 152. Mistake.
 - 153. Fraud.
 - 154. Undue influence.
 - 155. — In general.
 - 155.1. — Nature and degree in general.
 - 155.2. — Advice or suggestion.
 - 155.3. — Importunity, persuasion and threats.
 - 155.4. — Arising from acts of kindness or attention.
 - 155.5. — Creation of resentment and false impressions in mind of testator.
 - 156. — Physical and mental condition of testator.
 - 157. — Personal, confidential, or fiduciary relations.
 - (1). In general.
 - (2). Family relationship in general.
 - (3). Attorneys.
 - (4). Care custodians or caregivers.
 - 158. — Exercise of influence.
 - 158.1. — Time of influence.
 - 159. — Effect on disposition of property.
 - 160. Operation and effect in general.
 - (5). In general.
 - (1). Ratification or subsequent recognition of instrument by testator.
 - (2). Effect of waiver by person injured.
 - 161. Total or partial invalidity.
 - 162. Evidence.
 - 162.1. — In general.
 - 163. — Presumptions and burden of proof.
 - (1). In general.
 - (2). Personal, confidential, or fiduciary relations in general.
 - (3). Unlawful or improper relations.
 - (4). Devise or bequest to person drawing or assisting in execution of will.

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IV. REQUISITES AND VALIDITY.(Cont'd)

- (5). Devise or bequest to spouse or relative of person drawing or assisting in execution of will.
- (6). Unequal, unjust, or unnatural disposition.
- (7). Advice, persuasion, and acts of kindness.
- (8). Interest and opportunity of person benefited.
- 164. — Admissibility in general.
 - (.5). In general.
 - (1). Fraud and undue influence in general.
 - (2). Mistake.
 - (3). Unequal, unjust, or unnatural disposition.
 - (4). Relations between testator and persons benefited by or excluded from provisions of will.
 - (5). Motive, character, and conduct of persons benefited by will.
 - (6). Exertion of influence before or after execution of will.
 - (7). Physical and mental condition of testator.
- 165. — Declarations of testator.
 - (.5). In general.
 - (1). Admissibility in general.
 - (2). Time when made and res gestae.
 - (3). Corroborative facts and circumstances.
 - (4). Declarations respecting persons benefited by or excluded from will.
 - (5). Declarations as to inclinations or intentions respecting disposition of property.
- 166. — Weight and sufficiency.
 - (.5). In general.
 - (1). Fraud and undue influence in general.
 - (2). Personal, confidential, or fiduciary relations in general.
 - (3). Unlawful or improper relations.
 - (4). Direct or indirect benefit to person drawing or assisting in execution of will.
 - (5). Unequal, unjust, or unnatural disposition.

IV. REQUISITES AND VALIDITY.(Cont'd)

- (6). Consistency of disposition with inclinations and expressed intentions.
- (7). Motive and opportunity of person receiving benefit.
- (8). Physical and mental condition of testator.
- (9). Creation of resentment and false impressions in mind of testator.
- (10). Concealment or suppression of fact of execution of will.
- (11). Declarations of testator.
- (12). Circumstantial evidence.
- (G) REVOCATION.**
- 167. Revocation by act of testator in general.
- 168. Statutory provisions.
- 169. Capacity of testator.
- 170. Intent to revoke.
- 171. Destruction or mutilation.
- 172. Cancellation, obliteration, or alteration.
- 173. — In general.
- 174. — Partial revocation.
- 175. Destruction or alteration of duplicates or separate instruments.
- 176. Destruction, spoliation, or alteration by person other than testator.
- 177. Attempted or intended revocation prevented by fraud.
- 178. Subsequent will.
- 178.1. — In general.
- 179. — Making and effect in general.
- 180. — Loss of subsequent will.
- 181. — Express revocation.
- 182. — Inconsistent disposition.
- 183. — Partial revocation.
- 184. Codicil.
 - (.5). In general.
 - (1). Effect as revocation of provisions of will in general.
 - (2). Requisites and validity of codicil.
 - (3). Inconsistent dispositions or provisions.
 - (4). Particular provisions revoked.
- 185. Indorsement on will or codicil.
- 186. Revocation by writing not testamentary.
- 187. Oral revocation.
- 188. Revocation of joint or mutual will.
- 189. Conditional or dependent revocation.

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IV. REQUISITES AND VALIDITY.(Cont'd)

- 190. Revocation by operation of law in general.
- 191. Marriage and birth of issue.
- 192. Adoption of child.
- 193. Divorce.
- 194. Disposition of property or other alteration of estate.
- 195. Operation and effect of revocation.

(H) REVIVAL.

- 196. Revival of invalid or revoked will in general.
- 197. Republication of will in general.
- 198. Revival of revoked will by revocation of revoking instrument.
- 199. Revival or republication by codicil or other writing.
- 200. Oral revival or republication.
- 201. Revival of will revoked by operation of law.
- 202. Operation and effect of revival.

V. PROBATE OR CONTEST OF WILL.

(A) PROBATE IN GENERAL.

- 203. Nature and purpose of probate.
- 204. Statutory provisions.
- 205. Necessity for probate.
- 206. Instruments which may be admitted to probate.
- 207. Separate instruments.
- 208. Joint and mutual wills.
- 209. Nuncupative wills.
- 210. Fact of death of testator.
- 211. Duty to produce and offer will for probate.
- 212. Agreements of parties interested.
- 213. Probate in common form.
- 214. Probate in solemn form.
- 215. Determination in probate proceedings as to validity or construction of provisions of will.
- 216. Full or partial probate.
- 217. Successive applications for probate.
- 218. Abatement of proceedings.
- 219. Persons entitled to probate.
- 220. Persons who may oppose probate.
- 221. Revocation of probate.

(B) ACTIONS TO ESTABLISH OR DETERMINE VALIDITY IN GENERAL.

- 222. Nature and form of remedies in general.
- 223. Statutory provisions.
- 224. Right of action to reform will.
- 225. Right of action to contest or set aside will or probate.
- 226. Abatement and revival.
- 227. Persons who may sue to establish or defend will.
- 228. Persons who may attack or contest will or probate.
- 229. — In general.
- 230. — Estoppel, waiver, or agreement affecting right.

(C) PROBATE OR ESTABLISHMENT OF LOST OR DESTROYED WILLS.

- 231. Nature and form of remedies in general.
- 232. Statutory provisions.
- 233. Instruments which may be admitted to probate or established.
- 234. Loss, suppression, or destruction of instrument.
- 235. Right to probate.
- 236. Right of action to establish will.
- 237. Right of action to contest or set aside will or probate.

(D) PROBATE OR RECORD OF FOREIGN WILLS.

- 238. Nature and form of remedies in general.
- 239. Statutory provisions.
- 240. Instruments which may be admitted to probate or record.
- 241. Necessity of original probate in state of testator's domicile.
- 242. Nature and situs of property.
- 243. Right to probate.
- 245. Admission to record of will probated in other jurisdiction.
- 246. Right of action to contest or set aside will, probate, or record.

(E) JURISDICTION.

- 247. Jurisdiction of probate and proceedings relating thereto.
- 248. — In general.
- 249. — Domicile of testator.
- 250. — Existence and nature of property.
- 251. — Situs of property.
- 252. — Foreign wills.

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V. PROBATE OR CONTEST OF WILL.(Cont'd)

- 253. — Particular courts, judges, or other officers.
- 254. Jurisdiction of actions relating to wills or probate.
- 255. — In general.
- 256. — Court in which will was probated or recorded.
- 257. — Particular courts.

(F) VENUE.

- 258. In general.

(G) TIME FOR PROBATE OR CONTEST.

- 259. In general.
- 260. Limitations.
See also LIMITATION OF ACTIONS.
- 261. Laches.

(H) PARTIES.

- 262. Parties to proceedings in probate court.
- 263. — In general.
- 264. — Intervention, addition, and substitution.
- 265. Parties to actions.
- 265.1. — In general.
- 266. — Plaintiffs.
- 267. — Defendants.
- 268. — Intervention, addition, and substitution.

(I) NOTICE.

- 269. Notice of application for probate or for revocation.

(J) PROCESS.

- 270. Citation or other process in probate court.

(K) APPEARANCE.

- 271. Appearance in probate court.

(L) PETITIONS, OBJECTIONS, AND PLEADING.

- 272. Petitions and proceedings thereon in probate courts in general.
- 273. Petition for probate.
- 274. — In general.
- 275. — Lost, suppressed, or destroyed will.
- 276. — Probate or record of foreign will.

V. PROBATE OR CONTEST OF WILL.(Cont'd)

- 277. Objections to probate, answers to petitions therefor, and caveats.
- 278. Petition for revocation of probate, and objections or answer thereto.
- 279. Pleading in actions to establish will.
- 280. Pleading in actions to contest or set aside will or probate.
- 280.1. — In general.
- 281. — Bill, complaint, or petition in general.
- 282. — Allegations as to grounds of contest or setting aside.
- 283. — Plea or answer.
- 284. — Demurrer, exceptions, and motions.
- 285. — Amended and supplemental pleadings.
- 286. — Issues, proof, and variance.

(M) EVIDENCE.

- 287. Presumptions and burden of proof.
- 288. — In general.
 - (1). In general.
 - (2). Nuncupative wills.
 - (3). Actions and proceedings to set aside or determine validity of probated will.
- 289. — Execution, existence, and genuineness.
- 290. — Revocation.
- 291. Admissibility.
- 292. — In general.
- 293. — Execution, existence, and genuineness.
 - (1). In general.
 - (2). Knowledge by testator as to contents.
 - (3). Motives, intentions, and natural obligations of testator.
 - (4). Lost or destroyed will.
 - (5). Character and conduct of persons interested in will.
 - (6). Parol and extrinsic evidence.
- 294. — Attesting witnesses.
- 295. — Handwriting of testator and of attesting witnesses.
- 296. — Revocation.
- 297. — Declarations of testator as to execution or revocation.

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V. PROBATE OR CONTEST OF WILL.(Cont'd)

- (.5). In general.
- (1). Admissibility in general.
- (2). Motives, intentions, and natural obligations of testator.
- (3). Existence and contents of lost or destroyed will.
- (4). Revocation.
- 298. — Will or copy thereof and record of probate.
- 299. Weight and sufficiency.
- 300. — In general.
- 301. — Ex parte and uncontested proceedings.
- 302. — Execution, existence, and genuineness.
 - (1). In general.
 - (2). Genuineness of will and signatures thereto.
 - (3). Knowledge of testator as to contents of instrument.
 - (4). Erasures, interlineations, and other alterations.
 - (5). Recitals of formalities of execution.
 - (6). Holographic and nuncupative wills.
 - (7). Codicils.
 - (8). Lost or destroyed will.
 - (9). Foreign will.
- 303. — Testimony of attesting witnesses.
 - (1). In general.
 - (3). Execution, existence, and genuineness in general.
 - (4). Necessity of proof by all of the attesting witnesses.
 - (5). Defect of memory.
 - (6). Evidence other than that of attesting witnesses.
 - (7). Character, contradiction, and impeachment.
- 304. — Handwriting of testator and attesting witnesses.
- 305. — Declarations of testator.
- 306. — Revocation.

(N) HEARING OR TRIAL.

- 307. Withdrawal or dismissal of proceedings before trial.
- 308. Scope of inquiry and powers of court.

V. PROBATE OR CONTEST OF WILL.(Cont'd)

- 309. — In general.
- 310. — Contested proceedings in probate court.
- 311. — Actions relating to wills or probate.
- 312. Mode of hearing or trial in general.
- 313. Hearing of ex parte and uncontested applications.
- 314. Reference, commission to take testimony, and depositions.
- 315. Submission of issues to jury.
- 316. — In general.
- 316.1. — Grounds for submission in general.
- 316.2. — Testamentary capacity.
- 316.3. — Undue influence.
- 317. — Issues proper for jury.
- 318. — Proceedings for award and framing of issues.
 - (1). In general.
 - (2). Operation and effect of submission.
 - (3). Form, sufficiency, and effect of verdict and findings.
- 319. Notice of hearing or trial and preliminary proceedings.
- 320. Conduct of hearing or trial in general.
- 321. Right to open and close.
- 322. Reception of evidence.
- 323. Arguments and conduct of counsel.
- 324. Questions for jury in general.
 - (1). In general.
 - (2). Testamentary capacity.
 - (3). Undue influence and fraud.
 - (4). Execution and revocation.
- 325. Demurrer to evidence.
- 326. Dismissal at trial.
- 327. Direction of verdict.
- 328. Instructions.
- 329. — In general.
 - (1). Form and sufficiency in general.
 - (3). Presumptions and burden of proof.
 - (4). Weight and sufficiency of evidence.
 - (5). Conformity to pleadings and issues.
- 330. — Testamentary capacity.
 - (1). In general.

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V. PROBATE OR CONTEST OF WILL.(Cont'd)

- (2). Insane delusions or monomania.
- (3). Unequal, unjust, or unnatural disposition.
- 331. — Execution and validity in general.
 - (1). In general.
 - (2). Revocation.
 - (3). Unequal, unjust, or unnatural disposition.
 - (4). Lost or destroyed will.
- 332. — Undue influence and fraud.
- 333. Verdict and findings by jury.
- 334. Decision and findings by court or referee.
- 335. Objections and exceptions.
- 336. Waiver and correction of irregularities and errors.
- 337. Rehearing or new trial.

(O) JUDGMENT OR DECREE.

- 338. Grounds and mode of rendition in probate court.
- 339. — In general.
- 340. — Consent or agreement of parties.
- 341. — Contest and trial of issues.
- 342. Form and requisites in probate court in general.
- 343. Admission to probate.
- 344. — In general.
- 345. — Lost, suppressed, or destroyed will.
- 346. — Incidental determination as to validity and construction of provisions of will.
- 347. Admission to record of will probated in other jurisdiction.
- 348. Refusal of probate.
- 349. Judgments in actions relating to wills or probate.
- 349.1. — In general.
- 350. — Rendition, form, and requisites in general.
- 351. — Establishment and validity of will.
- 352. — Setting aside probate.
- 353. Entry and record.
- 354. Certificate of probate.
- 355. Opening or vacating.

(P) REVIEW.

- 356. Nature and form of remedy.
- 357. Appellate jurisdiction.

V. PROBATE OR CONTEST OF WILL.(Cont'd)

- 358. Decisions of probate courts, judges, or other officers reviewable.
- 359. Right of review of decisions of probate and intermediate courts.
- 360. Presentation and reservation in probate court of grounds of review.
- 361. Parties on appeal from probate court.
- 362. Requisites and proceedings for transfer of cause from probate or intermediate court.
- 363. — In general.
- 364. — Time for taking proceedings.
- 365. — Petition or prayer, and allowance.
- 366. — Bonds or other securities.
- 367. — Citation or other process or notice.
- 368. Effect of transfer of cause from probate court or proceedings therefor.
- 369. Supersedeas or stay of proceedings of probate court.
- 370. Record or transcript of proceedings in probate court.
- 371. Assignment of errors or statement of grounds or reasons of appeal.
- 371.5. Dismissal, withdrawal, or abandonment.
- 372. Hearing on appeal from probate or intermediate court in general.
- 373. Trial of cause anew on appeal from probate court.
- 373.1. — In general.
- 374. — Cases and questions triable in appellate court.
- 375. — Proceedings for trial de novo in general.
- 376. — Scope of inquiry.
- 377. — Further pleadings or new pleadings.
- 378. — Evidence.
- 379. — Mode and conduct of trial.
- 380. — Questions for jury.
- 381. — Instructions.
- 382. — Verdict and findings.
- 382.5. — New trial.
- 383. Scope and mode of review of decisions of probate court.
- 384. — In general.
- 386. — Questions of fact.
- 387. Determination and disposition of cause on appeal from probate court.

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V. PROBATE OR CONTEST OF WILL.(Cont'd)

- 388. — In general.
- 389. — Judgment on trial de novo.
- 390. — Affirmance, modification, or reversal of judgment or decree of probate court.
- 391. — Directing new trial or other or further proceedings.
- 392. — Remand and proceedings in court.
- 393. Review of decisions in actions relating to wills or probate.
- 393.1. — In general.
- 394. — Decisions reviewable.
- 395. — Right of review.
- 396. — Presentation and reservation in lower court of grounds of review.
- 397. — Taking and perfecting appeal or other proceeding.
- 398. — Effect of appeal or other proceeding.
- 399. — Record.
- 400. — Scope and mode of review.
- 401. — Determination and disposition of cause.
- 401.5. Liabilities on bonds and other securities.

(Q) FEES AND COSTS.

- 402. Power to award costs in general.
- 403. Discretion of court.
- 404. Parties to whom costs may be awarded.
- 405. Persons, property, and funds liable for costs.
- 406. Security for costs.
- 407. Proceedings in forma pauperis.
- 408. Amount and items of costs.
- 409. Taxation of costs.
- 410. Costs on appeal or other proceedings for review.
- 411. Payment and remedies for collection of costs.
- 412. Counsel fees and expenses.
- 412.1. — In general.
- 413. — Power to allow or award in general.
- 414. — Grounds for allowance.
- 415. — Charge on estate or interest therein.
- 416. — Application for allowance and proceedings thereon.

(R) OPERATION AND EFFECT.

- 417. Effect of probate on will in general.
- 418. Presumptions as to probate.
- 419. Custody and disposition of will after probate.
- 420. Record of will and certificate of probate as conveyance.
- 421. Collateral attack on probate or judgment.
- 422. Conclusiveness of probate or record.
- 423. — In general.
- 424. — Probate in common form.
- 425. — Probate in solemn form.
- 426. — Admission to record of will probated elsewhere.
- 427. — Execution, genuineness, validity, and contents of will.
- 428. — Validity of provisions of will.
- 429. — Will of personal property.
- 430. — Will of real property.
- 431. Conclusiveness of refusal or revocation of probate.
- 432. Conclusiveness and effect of adjudication as to validity of instrument or probate.
- 433. Admissibility, as evidence, of will or proofs, or of record or exemplified copy thereof.
- 434. Foreign probate or judgment.

VI. CONSTRUCTION.

(A) GENERAL RULES.

- 435. Application to wills in general.
 - (1). In general.
 - (2). Necessity of construction.
- 436. What law governs.
 - (1). In general.
 - (2). Domicile of testator in general.
 - (3). Time of death or time of execution of will, domicile at.
 - (4). As affected by property involved; personalty or realty.
 - (5). Directions of testator.
 - (6). Particular questions.
 - (6.1). — In general.
 - (7). — Trusts.
 - (8). — Powers.
- 437. Statutory provisions.
 - (1). In general.

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VI. CONSTRUCTION.(Cont'd)

- (2). Validity.
- (3). Time of death or time of execution of will; retroactivity.
- 438. Intention of testator.
- 439. — In general.
- 440. — Ascertainment from words of will.
- 441. — Situation of testator and circumstances of making of will.
- 442. — Contravention of law.
- 443. — General and particular intention.
- 444. — Giving effect in part, if not in full.
- 445. Construction in favor of instrument.
- 445.1. — In general.
- 446. — Validity in general.
- 447. — Legality of provisions.
- 448. — Operative effect, and construction against intestacy.
- 449. — Disposition of entire estate, or partial intestacy.
- 450. — Operative effect of all parts of will.
- 451. — Construction against failure or lapse of gift or other provision.
- 452. Construction in favor of heirs, next of kin, or surviving wife or husband.
- 453. Construction in favor of just, natural, or reasonable disposition.
- 454. Language of instrument.
- 455. — In general.
- 456. — Ordinary or arbitrary or peculiar meaning.
- 457. — Technical words.
- 458. — Same words in different parts of will, or applied to different subjects.
- 459. — Molding or change of language in general.
- 460. — Transposition of words.
- 461. — Substitution of words.
- 462. — Supplying words omitted.
- 463. — Rejection of superfluous or repugnant words.
- 464. — Mistakes in writing, grammar, or spelling.
- 465. — Punctuation.
- 466. — Particular words and phrases.
- 467. Recitals and statements as to reasons, intentions, and wishes of testator.
- 468. Separate clauses or parts.
- 469. — In general.
- 470. — Construction as a whole.

VI. CONSTRUCTION.(Cont'd)

- (1). In general.
- (2). Four corners of will.
- (3). Particular wills or provisions.
- 471. — Repugnant and conflicting provisions.
- 472. — Relative position.
- 473. — Partial invalidity.
- 474. Construing instruments together.
- 475. — In general.
- 476. — Wills and codicils.
- 477. Writings annexed or referred to in will.
- 478. Implied dispositions in general.
- 479. Construction by umpire, executor, or persons interested, and jurisdiction of courts.
- 480. Operation of will in general.
- 481. Time from which will speaks.
- 482. Operation as to after-acquired property.
- 483. Effect of change in condition or circumstances occurring subsequently to will.
- 484. Effect of conveyances or acts of testator subsequent to will.
- 485. Evidence to aid construction.
- 486. — In general.
- 487. — Showing intention of testator in general.
 - (1). In general.
 - (1.1). Ambiguity or uncertainty in language in general.
 - (1.2). Parol or extrinsic evidence in general.
 - (2). Situation and relations of testator and circumstances connected with making of will.
 - (3). Writings and declarations of testator.
 - (4). Mistakes and omissions.
 - (5). Nature of estate or interest created.
 - (6). Testimony of scrivener.
- 489. — Identification of persons or other objects.
 - (1). In general.
 - (2). Ambiguity or uncertainty in language in general.
 - (2.1). Parol or extrinsic evidence in general.
 - (3). Feelings and relations of testator as to persons involved.

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VI. CONSTRUCTION.(Cont'd)

- (4). Declarations and instructions of testator.
- (5). Mistake or omission.
- (6). Corporations, associations, or societies.
- 490. — Identification of property or other subject-matter.
 - (1). In general.
 - (2). Ambiguity or uncertainty in language.
 - (3). Parol or extrinsic evidence.
- 491. Questions for jury.
- (B) DESIGNATION OF DEVISEES, AND LEGATEES AND THEIR RESPECTIVE SHARES.**
- 492. Mode of designation in general.
- 493. Certainty in designation and description in general.
- 494. Individual name or other designation.
- 495. Words of relationship as words of donation or of limitation.
- 496. Husband and wife.
- 497. Children and grandchildren.
 - (1). In general.
 - (2). "Children" as including "grandchildren".
 - (3). "Grandchildren" as including "great-grandchildren".
 - (4). Stepchildren and children of the half blood or by different marriages.
 - (5). Adopted children.
 - (6). Children born out-of-wedlock.
 - (7). Children en ventre sa mere at death of testator or legatee.
- 498. Issue, descendants, or offspring.
- 499. Collaterals.
- 500. Parents and other ascendants.
- 501. Family.
- 502. Relatives.
- 503. Servants or employees.
- 504. Personal condition, occupation, or other particular description.
- 505. Heirs.
- 506. — In general.
 - (1). In general.
 - (2). Application of laws of descent and distribution in general.
 - (3). Husband or wife.

VI. CONSTRUCTION.(Cont'd)

- (4). Children and their issue, or collaterals.
- (5). Children born out-of-wedlock and adopted children.
- (6). "Heirs" of living person.
- (7). Devisees and legatees.
- 507. — Nature of property.
- 508. Next of kin.
- 509. — In general.
- 510. — Nature of property.
- 511. Representatives.
- 512. Deceased persons or their heirs or representatives.
- 513. Executors and administrators.
- 514. Corporations and associations in general.
- 515. Charitable institutions.
- 516. Educational institutions.
- 517. Religious societies.
- 518. Municipal corporations.
- 519. Persons included in residuary clause.
- 520. Erroneous description.
- 521. Classes.
- 522. — In general.
- 523. — Devise or bequest to class or to individuals.
- 524. — Time of ascertainment of class.
 - (1). In general.
 - (2). Ascertainment at testator's death in general.
 - (3). Ascertainment at date of will.
 - (4). Birth of children after execution of will and before death of testator.
 - (5). Birth of children after death of testator in general.
 - (6). Ascertainment at termination of precedent estate or time of payment or distribution.
 - (6.1). — In general.
 - (7). — Precedent birth of children.
 - (8). — Subsequent birth of children.
 - (9). Ascertainment at majority or marriage of devisees or legatees.
- 525. Shares or portions and division of estate in general.
- 526. Shares and division of residue.
- 526.1. — In general.

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VI. CONSTRUCTION.(Cont'd)

- 527. — General residue.
 - 528. — Particular residue.
 - 529. Shares of and division among members of class.
 - 530. Taking per stirpes or per capita.
 - 531. — In general.
 - (1). In general.
 - (2). Devise or bequest to heirs or representatives in general.
 - (3). Devise or bequest to children or heirs of different persons.
 - (4). Devise or bequest to persons and children or heirs of other persons.
 - (5). Devise or bequest to parent and children.
 - 532. — Members of classes.
 - 533. — Survivors or representatives of deceased devisees or legatees.
 - 534. Restriction of devisee or legatee to specific amount or particular provision or benefit.
 - 535. Exclusion from provisions of or benefits under will.
- (C) DEATH OF DEVISEE OR LEGATEE.
- 536. Succession on death of devisee or legatee before gift takes effect in general.
 - 537. Death of devisee or legatee as contingency.
 - 537.1. — In general.
 - 538. — Time of death in general.
 - 539. — Devise or bequest to take effect immediately.
 - 540. — Devise or bequest to take effect after prior estate, or at time appointed.
 - 541. Death coupled with other contingency.
 - 542. — In general.
 - (1). In general.
 - (2). Happening of all or part of several contingencies.
 - (3). Happening of contingency as to one or more of several devisees or legatees.
 - (4). Effect of closing of contingencies.
 - 543. — Dying before time specified, or before attaining certain age.
 - 544. — Dying unmarried.

VI. CONSTRUCTION.(Cont'd)

- 545. — Dying without issue.
 - (1). In general.
 - (2). Time of death in general.
 - (3). Death before testator.
 - (4). Death before termination of prior estate.
 - (5). Death before attaining certain age.
 - (6). Death or survival of issue.
- 546. Survivorship.
- 546.1. — In general.
- 547. — Devises or bequests to survivors in general.
- 548. — Persons included and shares as survivors.
- 549. — Further survivorship in shares accrued by survivorship.
- 550. Representation.
- 551. — In general.
- 552. — Representation under statutory provisions.
 - (1). In general.
 - (2). Nature of property devised or bequeathed or of estate created.
 - (3). Persons entitled to take and their respective shares.
 - (4). Representatives of persons deceased before execution of will.
 - (5). Devise or bequest to class.
 - (6). Succession to rights and liabilities of decedent.
- 553. Substitution.
- 553.1. — In general.
- 554. — Original or substitutional nature of provisions.
- 555. — Substitution of issue or others in general.
 - (1). In general.
 - (2). Issue of devisees or legatees dying before execution of will.
 - (3). Persons included and shares as substitutes.
 - (4). Words of relationship as words of substitution or of limitation.
- 556. — Gifts over to executors or administrators.
- 557. — Substitution to shares of members of classes.

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(D) DESCRIPTION OF PROPERTY.

558. Mode of description.
 (1). In general.
 (2). Property to be purchased for legatee.
559. Property, estate, or other general terms.
560. Real property and interests therein in general.
 (1). In general.
 (2). Location of property.
 (3). Title or interest of testator in general.
 (4). Devise of land as including interest under sale or mortgage.
 (5). Selection by devisee.
561. Particular description of specific real property.
 (1). In general.
 (2). Land adjoining or appurtenant to property described in general terms.
 (3). Possession and occupancy.
 (4). Undivided interest in land.
562. Appurtenances to real property.
563. Real property with personal property thereon.
564. Rents, profits, income, or use and occupation of real property.
 (1). In general.
 (2). As passing interest in land to which appurtenant.
 (3). Nature and extent of use and enjoyment.
565. Personal property in general.
 (1). In general.
 (2). Deduction of debts and expenses.
 (3). Bequest of personal property as including interest in real estate.
 (4). Title or interest of testator.
566. Money.
567. Amount of pecuniary legacy.
568. Amount and duration of annuity.
569. Credits and rights of action in general.
570. Corporate or other stock or bonds, and other investments and securities.
571. Life insurance.
572. Personal property described by location or use.
573. Interest, income, or produce of personal property.

VI. CONSTRUCTION.(Cont'd)

- (5). In general.
- (1). Bequest of property or fund as including interest, income, or produce.
- (2). Bequest of interest or income as including property or fund from which payable.
- (3). Property constituting capital, and nature, extent, and duration of use and enjoyment.
574. Debts or other obligations released.
575. Words of description of both real and personal property.
576. Source or mode of acquisition of property.
577. Community property.
578. After-acquired property.
 (1). In general.
 (2). General or specific words of description.
 (2.1). — In general.
 (3). — Residuary clause.
 (4). Construction and operation of statutory provisions.
 (5). Real or personal property.
579. General and specific words of description.
580. Repugnant or conflicting descriptions.
581. Erroneous description.
582. Devise or bequest of property of specified value.
583. General devise or bequest of entire property or estate.
584. Exception from general devise or bequest.
585. Substituted, or cumulative, or additional devise or bequest.
 (1). In general.
 (2). Provisions of codicils.
 (3). Participation in residue.
 (4). Participation as remainderman.
 (5). Rights of devisee or legatee under later devise or bequest.
586. Residuary clause.
- 586.1. — In general.
587. — General residue.
 (1). In general.
 (2). Restriction of residuary clause by specific words.

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VI. CONSTRUCTION.(Cont'd)

- (3). Real or personal estate.
- (4). Income.
- (5). Particular estates or interests.
- (6). Amount of residue or of legacy payable therefrom.
- 588. — Particular residue.
- 589. Devises and bequests in execution of powers.
 - (1). In general.
 - (2). Construction of instruments together.
 - (3). Intent to exercise power in general.
 - (4). Will disposing of all donee's property; general devise or bequest.
 - (5). Residuary clause.
 - (6). Failure to refer to power.
 - (7). Operation and effect of exercise of power.

(E) NATURE OF ESTATES AND INTERESTS CREATED.

- 590. Creation by will in general.
- 591. Technical words of limitation in general.
- 595. Estates by implication in general.
- 596. Fee simple.
- 596.1. — In general.
- 597. — Words necessary or sufficient in general.
 - (1). In general.
 - (2). Separate clauses or parts of will.
 - (3). Construction and operation of statutory provisions.
 - (4). Words of purchase or of limitation.
 - (5). Fee charged with other estate or interest.
 - (6). Devises in lieu of dower or for separate use of spouse.
- 598. — Devise without words of limitation.
- 599. — Implication in general.
- 600. — General devise with power of disposition.
 - (1). In general.
 - (2). Disposition for benefit of children or others.
 - (3). Construction and operation of statutory provisions.

VI. CONSTRUCTION.(Cont'd)

- (4). Limitation over on death of devisee or other event.
- 601. — Limitations or other provisions repugnant to or inconsistent with devise in fee.
 - (1). In general.
 - (2). Limitation over of property undisposed of.
 - (3). Limitation over on marriage of devisee.
 - (4). Restraint of alienation.
 - (5). Trusts and other limitations on enjoyment.
 - (6). Restrictions as to use of property.
 - (7). Devises for separate use of spouse.
 - (8). Precatory words.
 - (9). Devise, bequest, or property to which limitation or provision applies.
 - (10). Words of purchase or of limitation.
- 602. Qualified, defeasible, or conditional fees.
 - (1). In general.
 - (2). Implication.
 - (3). Defeat of estate by death without issue.
 - (4). Defeat of estate by birth and survivorship of issue.
 - (5). Defeat of estate by marriage of devisee.
 - (6). Conversion into fee simple.
- 604. Estates tail.
- 604.1. — In general.
- 605. — Words necessary or sufficient in general.
- 606. — Implication.
- 607. — Conversion into fee-simple or other estate under statutory provisions.
 - (5). In general.
 - (1). Conversion into fee simple.
 - (2). Conversion into life estate with remainder in fee.
- 608. Application of rule in Shelley's Case.
 - (1). In general.
 - (2). Intention of testator.
 - (3). Life estate with limitation to heirs.
 - (3.1). — In general.
 - (4). — Personal property.

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VI. CONSTRUCTION.(Cont'd)

- (5). — Power or restraint of disposition.
- (6). — Words of distribution.
- 609. Absolute estate in personal property.
- 609.1. — In general.
- 610. — Words necessary or sufficient in general.
 - (1). In general.
 - (2). General bequest with power of disposition.
 - (3). Bequest in lieu of dower or for separate use of spouse.
 - (4). Qualified or defeasible estate.
 - (5). Separate clauses or parts of will.
- 611. — Implication.
- 612. — Limitations or other provisions repugnant to or inconsistent with absolute bequest.
 - (1). In general.
 - (2). Limitation over of property undisposed of.
 - (3). Trusts, limitations on enjoyment, and restraint of alienation.
 - (4). Precatory words.
 - (5). Devise, bequest, or property to which limitation or provision applies.
- 613. Life estates.
- 613.1. — In general.
- 614. — Words necessary or sufficient in general.
 - (1). In general.
 - (2). Devise or bequest with limitation over in general.
 - (3). Devise or bequest without limitation over.
 - (4). Personal property in general.
 - (4.5). Personal property the use of which consists in its consumption.
 - (5). Separate clauses or parts of will.
 - (6). Limitation to heirs, issue, or children of life tenant.
 - (6.1). — In general.
 - (7). — Construction and operation of statutory provisions.
 - (8). — Personal property.
 - (9). — Limitation to others on failure of issue.

VI. CONSTRUCTION.(Cont'd)

- (10). — Children unborn at date of will or death of testator.
- (11). — Words of distribution.
- (12). — Devises or bequests for separate use of spouse.
- (13). Estates determinable on marriage.
- (14). Devises or bequests in lieu of dower or for separate use of spouse.
- (15). Life estate charged with other estate or interest.
- (16). Devise or bequest for use and benefit of life tenant and children or others.
- (17). Devise or bequest of use or income.
- (18). Loan of property.
- (19). Duration of estate and successive life estate.
- 615. — Implication.
- 616. — Devise or bequest for life with power of control or disposition.
 - (1). In general.
 - (2). Construction and operation of statutory provisions.
 - (3). Personal property.
 - (4). Limitation over of property undisposed of in general.
 - (5). Disposal at death of devisee or legatee.
 - (6). Conditional, contingent, or limited disposition.
 - (7). Control or disposition for benefit of life tenant and of children or others.
 - (8). Repugnancy or inconsistency with estate in remainder.
 - (9). Separate clauses or parts of will.
- 617. — Limitations or other provisions repugnant to or inconsistent with devise or bequest for life.
- 618. Income.
- 619. Annuities.
- 620. Maintenance.
- 621. Collateral limitations.
- 622. Remainders.
- 623. Cross-remainders.
- 624. Conditional limitations.

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VI. CONSTRUCTION.(Cont'd)

- 625. Executory devises or bequests, and shifting, springing, or other future uses, or estates in the nature thereof.
- 626. Concurrent or successive interests.
- 627. Estates in severalty, joint tenancy, or tenancy in common.
 - (1). In general.
 - (2). Construction and operation of statutory provisions.
 - (3). Words of distribution.
 - (4). Restrictions and other provisions as to part of several devisees or legatees.
 - (5). Estates by the entirety.

(F) VESTED OR CONTINGENT ESTATES AND INTERESTS.

- 628. Nature and grounds of distinction.
- 629. Construction in favor of vesting.
- 630. Contingency on which estate or interest depends in general.
 - (1). In general.
 - (2). Postponement of time of payment or distribution in general.
 - (3). Marriage or attainment of certain age.
 - (4). Sale of property and distribution of proceeds.
 - (5). Title and power of control or disposition in executor or trustee.
 - (6). Directions to pay or divide.
 - (7). Directions for investment and accumulation.
 - (8). Conditions and restrictions.
 - (9). Enjoyment of income or other benefit before payment or distribution.
 - (10). Limitation over on death of devisee or legatee.
 - (11). Devise or bequest to survivors.
 - (12). Words indicating time of vesting.
 - (13). Devise or bequest of residue or of rents, profits, and income.
- 631. As affected by nature of property devised or bequeathed.
- 632. Legacies payable out of personalty.
- 633. Legacies charged on real property or on both real and personal property.
- 634. Remainders.

VI. CONSTRUCTION.(Cont'd)

- (1). In general.
- (2). Construction and operation of statutory provisions.
- (3). Certainty as to beneficiaries and as to time of enjoyment.
- (4). Power of disposition in first taker.
- (4.1). — In general.
- (5). — Disposition to or for benefit of remainderman.
- (6). Sale of property, disposition of proceeds, and interposition of trustee.
- (7). Directions to pay or convey to or divide among devisees or legatees.
- (8). Limitation over or substitution on death or failure of remaindermen.
- (9). Limitations dependent on contingency.
- (10). Limitation over to persons living and the issue of persons deceased.
- (10.1). — In general.
- (11). — Directions to pay or convey to or divide among devisees or legatees.
- (12). Devise or bequest to survivors.
- (13). Remainder to heirs or persons entitled to take by descent.
- (14). Devise or bequest to class.
- (15). Postponement of time of payment or distribution to remaindermen.
- (16). Conditions and restrictions.
- (17). Birth of children between time of death of testator and termination of life estate.
- (18). Vesting dependent on several contingencies.
- (19). Words indicating time of vesting.
- (20). Limitation over of principal after life estate in income.
- 635. Opening of vested estates or interests to let in after-born children.
- 636. Divesting vested estates or interests.
- 637. Contingent estates or interests becoming vested.

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VI. CONSTRUCTION.(Cont'd)

638. Extinguishment of contingent estate or interest.

(G) CONDITIONS AND RESTRICTIONS.

- 639. Nature and creation of conditions.
- 640. Validity of conditions.
- 641. — In general.
- 642. — Assumption of name, residence, and other personal acts.
- 643. — Religious belief.
- 644. — Character and conduct.
- 645. — Maintenance or services.
- 646. — Payment or other performance of obligations imposed.
- 647. — Marriage.
- 648. — Insolvency or bankruptcy.
- 649. — Restraint of alienation.
- 650. — Use of property.
- 651. — Contest of will or other litigation.
- 652. — Claims against estate.
- 653. — Repugnancy to devise or bequest.
- 654. — Effect of invalidity.
- 655. Construction and operation of conditions.
- 656. — In general.
- 657. — Conditions precedent.
- 658. — Conditions subsequent.
 - (1). In general.
 - (2). Contest of will or other litigation.
- 659. Performance or breach.
- 660. — In general.
- 661. — Time for performance.
- 662. — Sufficiency of performance.
- 663. — Excuses for nonperformance.
- 664. — Discharge by impossibility of performance.
- 665. — Breach and effect thereof.
 - (1). In general.
 - (2). Contest of will or other litigation.
- 666. Release or waiver of condition or of forfeiture for breach.
- 667. Enforcement of forfeiture.
 - (1). In general.
 - (2). Contest of will or other litigation.
- 668. Restrictions as to use of property.

(H) ESTATES IN TRUST AND POWERS.

1. CREATION OF TESTAMENTARY TRUSTS.

- 669. Creation of testamentary trusts in general.
- 670. Words necessary or sufficient to create trust.
- 671. — In general.
- 672. — Grants of authority or directions importing trust.
 - (1). In general.
 - (2). Discretion of devisee or legatee as to disposition.
 - (3). Authority or directions to executor.
- 673. — Provisions for maintenance.
- 674. — Spendthrift trusts.
- 675. — Precatory words.
- 676. Implication of trust.
- 677. Consideration of extrinsic facts and circumstances.
- 678. Limitations or other provisions repugnant to or inconsistent with trust.

2. CONSTRUCTION OF TESTAMENTARY TRUSTS.

- 680. In general.
- 681. Trustees.
 - (1). In general.
 - (2). Estate, title, or interest of trustee.
- 682. Cestuis que trust.
 - (1). In general.
 - (2). Estate, title, or interest of beneficiaries.
- 683. Property devised or bequeathed.
- 684. Capital and income.
- 684.1. — In general; property constituting capital.
- 684.2. — Right to capital or income in general.
 - (1). In general.
 - (2). Invasion of corpus.
 - (2.1). — In general.
 - (3). — Grounds and purposes in general.
 - (4). — Support or maintenance.
 - (5). — Other resources of beneficiary.
 - (6). — Paying annuities or fixed amounts.
 - (7). — Extent of invasion.

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VI. CONSTRUCTION.(Cont'd)

- 684.3. — Distinction between capital and income.
- (1). In general.
 - (2). Allocation of receipts in general.
 - (3). Sale proceeds.
 - (4). Dividends or other corporate distributions.
 - (4.1). — In general.
 - (5). — Liquidating or extraordinary dividends.
 - (6). — Stock dividends or stock splits.
 - (7). Wasting or unproductive assets, receipts from.
- 684.4. — Amount of capital.
- 684.5. — Deduction of expenses, costs, and charges.
- 684.6. — Excess or deficiency of income.
- 684.7. — Accrual of right to capital or income.
- 684.8. — Mode of payment or distribution in general.
- 684.9. — Amount of income payable to beneficiary.
- 684.10. — Discretion of executor or trustee.
- (1). In general.
 - (2). Payment or accumulation of income.
 - (3). Payment or distribution of principal.
 - (3.1). — In general.
 - (4). — Support or maintenance.
 - (5). — Consideration of beneficiary's other resources.
 - (6). Allocation to capital or income.
685. Purposes of trust.
686. Duration and termination of trust or trust estate.
- (1). In general.
 - (2). Death of beneficiary, and survivorship.
 - (3). Marriage or majority of beneficiaries.
 - (4). Conveyance or release.
687. Limitation over or other disposition of property on termination of trust.
- (1). In general.

VI. CONSTRUCTION.(Cont'd)

- (2). Devisees, heirs, and representatives of beneficiaries.
 - (3). Heirs of testator.
 - (4). Rights of residuary legatees.
 - (5). Nature of estate vesting after termination of trust.
 - (6). Mode of payment, distribution, or conveyance.
688. Effect of failure of trust.
- ### 3. TESTAMENTARY POWERS.
689. Creation of testamentary powers.
690. Construction of testamentary powers.
691. — In general.
692. — Power of appointment, revocation, or disposition.
- (1). In general.
 - (2). Support and maintenance of donee or beneficiary.
 - (3). Property or fund subject to disposition.
 - (4). Persons to whom property may be given or conveyed.
 - (5). Mode of disposition.
 - (6). Duration and termination of right.
 - (7). Interest of donee of power and of beneficiary.
694. Limitation over or other disposition of property on failure of execution of power.

(I) ACTIONS TO CONSTRUE WILLS.

695. Nature and form of remedy.
- (1). In general.
 - (2). Necessity of construction and nature of question involved in general.
 - (3). Necessity that will involve trust.
 - (4). Contingent or future rights and matters of speculation or hypothesis.
696. Statutory provisions.
697. Right of action.
- (1). In general.
 - (2). Devisees and legatees.
 - (3). Executors, administrators, and trustees.
698. Jurisdiction and venue.
699. Time to sue, limitations, and laches.
See also LIMITATION OF ACTIONS.

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VI. CONSTRUCTION.(Cont'd)

- 700. Parties.
- 701. Process or notice.
- 702. Pleading.
- 703. Evidence.
- 704. Trial or hearing, and scope of inquiry.
- 705. Judgment or decree, and enforcement thereof.
- 706. Review.
- 707. Fees and costs.
 - (1). In general.
 - (2). Payment from estate.
 - (3). Payment from property or fund involved in controversy.

VII. RIGHTS AND LIABILITIES OF DEVISEES AND LEGATEES.

(A) NATURE OF TITLE AND RIGHTS IN GENERAL.

- 708. Rights of devisees or legatees before probate or establishment of will.
- 709. Disqualification of devisee or legatee to take.
 - 709.1. — In general.
- 710. — Unworthiness or misconduct in general.
- 711. — Causing or procuring death of testator.
- 712. Devise or bequest to attesting witness.
- 713. Devise or bequest to heir or next of kin.
- 714. Devise or bequest to creditor.
- 715. Devise or bequest to debtor.
- 716. Devise or bequest to executor or trustee.
- 717. Acceptance or renunciation or disclaimer of devise or legacy.
 - (1). In general.
 - (2). Time for renunciation or disclaimer; relation back.
- 718. Estoppel by acceptance of devise or legacy.
- 719. Abandonment or forfeiture of devise or legacy.
- 720. Title of devisees and legatees.
- 721. — In general.
- 722. — Real property and interests therein.
- 723. — Personal property in general.
- 724. — Rights in action in favor of estate.
- 725. Option to purchase or take at valuation property of estate or to take money in lieu of property.

VII. RIGHTS AND LIABILITIES OF DEVISEES AND LEGATEES.(Cont'd)

- 726. Rights as against executor.
- 727. Possession and control of property.
- 728. Rents and profits, income, and accumulations.
- 729. Annuities.
- 730. Maintenance from estate.
- 731. Charges and claims in favor of estate against devisees and legatees.
- 732. Property or fund out of which legacies are to be paid.
 - (1). In general.
 - (2). Realty or personalty in general.
 - (3). Payment from particular property or fund.
 - (4). Payment from property specifically devised or bequeathed.
 - (5). Payment from capital or income.
 - (6). Payment from residue or intestate estate.
 - (7). Loss or other disposition of property or fund and necessity and effect of conversion.
- 733. Time of accrual of right to devise or legacy.
 - (1). In general.
 - (2). Termination of precedent estate or interest in general.
 - (3). Attainment of certain age or marriage of devisees or legatees.
 - (4). Death of devisees or legatees.
 - (5). Contingencies happening before death of testator.
 - (6). Probate or record of will.
 - (8). Bequest of interest or income.
 - (9). Annuities.
 - (10). Residuary devise or bequest.
 - (11). Legacies charged on property, estate, or interest.
 - (12). Discretion of executor as to payment or distribution.
- 734. Interest on legacies.
 - (1). In general.
 - (2). Time from and during which interest runs.
 - (2.1). — In general.
 - (3). — Effect of statutory provisions.

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VII. RIGHTS AND LIABILITIES OF DEVISEES AND LEGATEES.(Cont'd)

- (4). — Time when legacies are payable.
- (5). — Legacies to children or to widow in lieu of dower.
- (6). — Legacy of income, annuity, or maintenance.
- (7). — Specific legacies and legacies charged on property devised or bequeathed.
- (8). — Probate or contest of will and settlement of estate.
- (9). — Demand and acceptance.
- (10). Rate and computation.
- (11). Estoppel and waiver.
- (12). Property or fund from which payable.
- 735. Apportionment of income or annual or other stated payments.
- 736. Mutual rights and liabilities of devisees and legatees.
 - (1). In general.
 - (2). Debts and expenses.
 - (3). Income and property taxes.
- 740. Conveyances, agreements, and other transactions between devisees and legatees.
 - (1). In general.
 - (2). Recognition or evasion of provisions of will.
 - (3). Requisites and validity.
 - (4). Construction and operation.
- 741. Actions between devisees and legatees.
- 742. Conveyances of property by devisees or legatees.
- 743. Assignments of legacies.
- 744. Rights and liabilities of purchasers from or assignees of devisees or legatees.
- 745. Actions by devisees or legatees.
- 746. — In general.
- 747. — Relating to real property or interests therein.
- 748. — Relating to personal property.
- 749. Actions against devisees or legatees.

(B) CONSTRUCTION OF DEVISES AND BEQUESTS IN GENERAL.

- 750. In general.

(C) SPECIFIC DEVISES.

- 751. In general.

(D) SPECIFIC BEQUESTS.

- 753. In general.
- 754. Stocks, bonds, and other securities.

(E) DEMONSTRATIVE BEQUESTS.

- 755. In general.

(F) GENERAL BEQUESTS.

- 756. In general.

(G) ADVANCEMENTS.

- 757. In general.
- 758. Application of doctrine in general.
- 759. Construction and operation of testamentary provisions.
 - (1). In general.
 - (2). Debts or obligations as advancements.
 - (3). Gifts as advancements.
 - (4). Advancements to husband, wife, parent, or other relative of devisee or legatee.
 - (5). Effect of repayment, failure, or other extinguishment of obligation or gift constituting advancement.
 - (6). Time of advancement.
- 760. Amount.
- 761. Evidence.
- 762. Deduction and adjustment.

(H) ADEMPTION.

- 764. In general.
- 765. Legacies subject to ademption.
- 766. Gift or advance by testator.
- 767. Transfer or change of subject-matter.
- 768. Loss or destruction of subject-matter.
- 769. Revival of legacy ademed.
- 770. Evidence.
- 771. Operation and effect.

(I) SATISFACTION.

- 772. In general.

(J) LAPSE.

- 774. In general.

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VII. RIGHTS AND LIABILITIES OF DEVISEES AND LEGATEES.(Cont'd)

- 775. Death, disqualification, or failure of devisee or legatee.
 - 776. Failure of performance of condition or of contingency.
 - 777. Effect as to devisees, legatees, or members of class.
- (K) ELECTION.
- 778. Nature and grounds in general.
 - 779. Statutory provisions.
 - 780. Testamentary provisions under which election arises.
 - 781. — In general.
 - 782. — Provisions for surviving wife.
 - (1). In general.
 - (2). Express or implied restriction to provision of will.
 - (3). Nature of provision in general.
 - (4). Effect on scheme of disposition.
 - (5). Provisions for life or widowhood of wife or minority of children.
 - (6). Management and disposition of property by executors or trustees.
 - (7). Amount or value of provision.
 - (8). Will making no provision for widow.
 - (9). Wife as sole heir or distributee.
 - (10). Provisions of will and rights as heir or distributee of intestate estate.
 - (11). Provisions by will and provisions by act not testamentary.
 - (12). Provisions of will and adverse claim to property.
 - (13). Provisions of will and right to homestead.
 - 783. — Provisions for surviving husband.
 - 784. Estates and interests to which election is applicable.
 - 785. Persons entitled to elect.
 - (1). In general.
 - (2). Effect of death.
 - 785.5. Waiver, release, or forfeiture of right.
 - (1). In general.
 - (2). Antenuptial agreements.
 - (3). Separation agreements.

VII. RIGHTS AND LIABILITIES OF DEVISEES AND LEGATEES.(Cont'd)

- (4). Abandonment, desertion, nonsupport, separation, or divorce.
- 786. Capacity to elect.
- 787. Persons as against whom election may be enforced.
- 788. Mode of election and proceedings therefor in general.
 - (1). In general.
 - (2). Evidence.
 - (3). Review.
- 789. Proceedings to compel election.
- 790. Time for making election.
- 791. Acts constituting election.
- 792. — In general.
 - (1). In general.
 - (2). Maintaining or participating in actions or proceedings.
 - (3). Knowledge as to rights under and against will.
 - (4). Probate of will and acts and proceedings as executor.
 - (5). Evidence of election.
- 793. — Execution and filing of written instrument.
- 794. — Acts of acceptance, ownership, or assent to will.
- 795. — Failure to dissent from will.
- 796. Revocation of election.
- 797. Actions to set aside election.
- 798. Operation and effect.
- 799. — In general.
- 800. — Taking under will.
- 801. — Taking against will.
 - (1). In general.
 - (2). Benefits or rights under will.
 - (3). Scope and extent of rights in general.
 - (4). Homestead, allowances and exemptions.
 - (5). Computation of shares; assets included.
 - (5.1). — In general.
 - (5.2). — Augmented estate in general.
 - (5.3). — Nonprobate assets and transfers in general.
 - (6). — Inter vivos trusts.
 - (6.1). — Insurance proceeds.

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**VII. RIGHTS AND LIABILITIES OF DEVISEES
AND LEGATEES.(Cont'd)**

- (7). — Deduction of debts, expenses, and taxes.
- (8). Allotment of share.
- (8.1). — In general.
- (9). — Application of will benefits and distribution of difference.
- 802. — Rights of other devisees and legatees.
 - (1). In general.
 - (2). Remainders and other future or contingent estates.
 - (3). Residuary legatees.
 - (4). Income and accumulations.
 - (5). Compensation for loss or diminution of devise or bequest.
 - (6). Liability as to surviving spouse's share and charges on property.
- 803. — Rights of creditors of testator.

(L) ABATEMENT.

- 804. Nature and grounds in general.
- 805. Insufficiency of estate in general.
- 806. Intention of testator as to preference and provisions of will relating thereto in general.
- 807. Legacies or devises subject to abatement in general.
- 808. Bequests in satisfaction of debts or for other consideration.
- 809. Devise or bequest in lieu of dower or other statutory right.
- 810. Income or annuities.
- 811. Residuary legacies.
- 812. Specific devises or bequests.
- 813. Demonstrative legacies.
- 814. Lapsed devises or bequests.
- 815. Right to require abatement.
- 816. — In general.
- 817. — Residuary devisees and legatees.
- 818. Deduction and adjustment.

**(M) LEGACIES CHARGED ON PROPERTY,
ESTATE OR INTEREST.**

- 819. Testamentary charges in general.
- 820. Charge on property of estate in general.
 - (1). In general.
 - (2). Charge on realty implied from direction for sale or conversion.

**VII. RIGHTS AND LIABILITIES OF DEVISEES
AND LEGATEES.(Cont'd)**

- (3). Implication arising from nature and amount of personality.
- (4). Nature and extent of charge and property or interest liable therefor.
- (5). Lien on property charged.
- 821. Charge on property or interest devised or bequeathed.
 - (1). In general.
 - (2). Implication arising from nature and amount of personality.
 - (3). Charge of income or annuity.
 - (4). Charge of maintenance, support, and education.
 - (5). Nature and extent of charge.
 - (6). Property or interest affected by charge.
- 822. Charge on residue.
- 823. Personal liability of devisee or legatee of property charged.
- 824. Conveyances and incumbrances by devisees.
- 825. Release, waiver, or other extinguishment of charge.
- 826. Enforcement of charge.
 - (5). In general.
 - (1). Nature and form of remedy.
 - (2). Rights of actions, conditions precedent, and defenses.
 - (3). Jurisdiction and limitations.
See also LIMITATION OF ACTIONS.
 - (4). Parties.
 - (5). Pleading and evidence.
 - (6). Judgment or decree and relief awarded.
 - (7). Sale.

**(N) DEBTS OF TESTATOR AND INCUMBRANCES
ON PROPERTY.**

- 827. Nature and grounds of liability of devisees and legatees.
- 828. What law governs.
- 829. Statutory provisions.
- 830. Liabilities on receipt of property of estate in general.
- 831. Liabilities on receipt of legacy or other personality.
- 832. — In general.
- 833. — Debts enforceable.

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**VII. RIGHTS AND LIABILITIES OF DEVISEES
AND LEGATEES.(Cont'd)**

- 834. — Extent of liability.
- 835. Liabilities on devise of realty.
- 836. — In general.
- 837. — Debts enforceable against devisees in general.
- 838. — Specialties and debts of record.
- 839. — Covenants of testator relating to land.
- 840. — Liens and incumbrances on land.
 - (1). In general.
 - (2). Exoneration.
- 841. — Liens for debts as against devisees.
- 842. Conveyances and incumbrances by devisees.
- 842.1. — In general.
- 843. — Effect as to liabilities of devisees.
- 844. — Rights and liabilities of purchasers in general.
- 845. — Bona fide purchasers.
- 846. Apportionment of debts.
- 847. Actions against devisees, legatees, or purchasers.
 - (1). Nature and form of remedy and jurisdiction.
 - (2). Rights of action, defenses, limitation, and laches, and conditions precedent.

See also LIMITATION OF ACTIONS.

- (3). Parties, pleading, and evidence.
- (4). Judgment and execution.
- (5). Sale.
- (6). Costs.

848. Contribution.

**(O) VOID, LAPSED, AND FORFEITED DEVISES
AND BEQUESTS, AND PROPERTY AND
INTERESTS UNDISPOSED OF.**

- 849. Disposition or devolution in general.
- 850. Statutory provisions.
- 851. Effect of failure of devise or bequest on limitation over or other disposition.
- 852. — In general.
- 853. — Acceleration of remainder or other subsequent interest.
- 854. — Right to income or accumulations.
- 855. Effect of failure of limitation over or other disposition on precedent estate.
- 856. Testamentary provisions as to failure of devises or bequests.

**VII. RIGHTS AND LIABILITIES OF DEVISEES
AND LEGATEES.(Cont'd)**

- 857. Effect of residuary provisions.
- 858. — In general.
 - (.5). In general.
 - (1). Devises and bequests which fall into residuum in general.
 - (2). Construction and operation of statutory provisions.
 - (3). Real property.
 - (4). Lapse of devise or bequest on breach of condition or on death of beneficiary.
 - (5). Property undisposed of.
 - (6). Rents, profits, income, and accumulations.
- 859. — Particular residuary clauses.
- 860. — Rights of residuary devisees and legatees.
- 861. Failure of residuary devise or bequest.
- 862. — In general.
- 863. — Codevisees or colegatees.
- 864. Partial intestacy.
- 865. — In general.
 - (1). In general.
 - (2). Suspension of vesting or accrual of interest and postponement of sale or distribution.
 - (3). Rents, profits, and income.
 - (4). Persons entitled to take and their respective shares.
- 866. — Rights of heirs and next of kin.

**(P) RIGHTS AND REMEDIES OF CREDITORS
OF DEVISEES AND LEGATEES.**

- 867. Right to subject interests under will in general.
- 868. Provisions of will as to debts of devisee or legatee.
- 869. Interests or rights which may be subject-ed.
- 870. Effect of indebtedness of devisee or legatee to testator.
- 871. Exercise by creditor of rights of devisee or legatee under will.
- 872. Actions and other proceedings by creditors.

410. WITNESSES

410. WITNESSES

SUBJECTS INCLUDED

Production of oral testimony at trial of cause in general, civil or criminal
Competency to testify
Procuring attendance for that purpose, and production of documents by witnesses
Examination of witnesses
Their credibility, and corroborating, impeaching, or contradicting their testimony

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Administrative proceedings, production of oral testimony in, see ADMINISTRATIVE LAW AND PROCEDURE and other specific topics

Attesting or subscribing witnesses to written instruments, see DEEDS, WILLS, and other specific topics relating to particular instruments

Evidence, competency and admissibility in general, see EVIDENCE and specific topics—

Criminal prosecutions, evidence in, and especially testimony of accomplices, conspirators and codefendants, see CRIMINAL LAW and specific topics relating to particular offenses

Opinion evidence, including competency of experts and examination thereof as to competency, see CRIMINAL LAW, EVIDENCE

False testimony as offense, see PERJURY

Military cases decided by military courts, see MILITARY JUSTICE in the Federal Practice Digests

Privileged communications and confidential relations, see PRIVILEGED COMMUNICATIONS AND CONFIDENTIALITY

Written form, taking and use of testimony in, see AFFIDAVITS, FEDERAL CIVIL PROCEDURE, PRETRIAL PROCEDURE

I. IN GENERAL, ¶1-34.

II. COMPETENCY, ¶35-223.

(A) CAPACITY AND QUALIFICATIONS IN GENERAL, ¶35-79.

(B) PARTIES AND PERSONS INTERESTED IN EVENT, ¶80-124.

II. COMPETENCY—Cont'd

(C) "DEAD MAN'S" STATUTES AND RULES, ¶125-183.5.

(D) CONFIDENTIAL RELATIONS AND PRIVILEGED COMMUNICATIONS (OBSOLETE, SEE PRIVILEGED COMMUNICATIONS AND CONFIDENTIALITY).

III. EXAMINATION, ¶224-310.

(A) TAKING TESTIMONY IN GENERAL, ¶224-265.

(B) CROSS-EXAMINATION, ¶266-284.

(C) RE-EXAMINATION, ¶285-291.

(D) PRIVILEGE OF WITNESS, ¶292-310.

IV. CREDIBILITY AND IMPEACHMENT, ¶311-416.

(A) IN GENERAL, ¶311-332.

(B) CHARACTER AND CONDUCT OF WITNESS, ¶333-362.

(C) INTEREST AND BIAS OF WITNESS, ¶363-378.

(D) INCONSISTENT STATEMENTS BY WITNESS, ¶379-397.

(E) CONTRADICTION, ¶398-409.

(F) CORROBORATION, ¶410-416.

I. IN GENERAL.

1. Authority to compel attendance.
2. Right of accused to compulsory process.
 - (1). In general.
 - (2). Constitutional and statutory provisions.
 - (3). Continuance on account of absence of witness.
 - (4). Number of witnesses.
3. Persons who may be required to appear and testify.
4. — In general.
5. — Privileges and exemptions.
6. Place where attendance may be required; obtaining presence of witness from without jurisdiction.
7. Subpoena.
8. — In general.
9. — Application and proceedings thereon.
10. — Issuance.
11. — Form and requisites.
12. — Places where writ may be served.
13. — Service.
14. — Payment or tender of fees and expenses.
15. — Return and proof of service.

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I. IN GENERAL.(Cont'd)

16. Subpoena duces tecum.
17. Attachment to compel attendance.
18. Habeas corpus ad testificandum.
19. Bond, recognizance, or other security for appearance.
20. Taking into custody, commitment, and detention of witnesses.
21. Punishment of disobedience to subpoena as contempt.
22. Damages and penalties for failure to obey subpoena.
23. Compensation.
24. — In general.
25. — Persons entitled.
26. — Officers as witnesses.
27. — Amount in general.
28. — Additional compensation to experts.
 - (1). In general.
 - (2). Right to exact additional compensation.
29. — Mileage and expenses.
30. — Persons liable in general.
31. — Liability of state, county, or city.
32. — Statement, account, and certificate.
33. — Payment.
34. — Actions and other remedies.

II. COMPETENCY.

(A) CAPACITY AND QUALIFICATIONS IN GENERAL.

35. Capacity in general.
36. Constitutional and statutory provisions.
37. Knowledge or means of knowledge of facts.
 - (1). In general.
 - (2). Source of knowledge.
 - (3). Recollection of witness.
 - (4). Character or reputation.
 - (5). Conversations, admissions, and declarations.
 - (6). Surveys.
38. Race or color.
39. Degree of mental capacity in general.
40. Age and maturity of mind.
 - (1). In general.
 - (2). Discretion of court.
41. Unsoundness of mind.
42. Intoxication.
43. Persons deaf or mute.

II. COMPETENCY.(Cont'd)

44. Religious belief.
45. Obligation of oath.
 - (1). In general.
 - (2). Children.
46. Character and conduct in general.
47. Infamy or conviction of crime.
48. — In general.
 - (1). In general.
 - (2). Nature of offense.
 - (3). Character of proceedings against witness.
 - (4). Proceedings in which evidence is offered and nature of evidence.
 - (5). Statutory removal of disqualification.
49. — Effect of pardon or punishment.
50. Relationship to party in general.
51. Husband and wife.
- 51.5. — In general.
52. — Incompetency for or against each other in general.
 - (1). In general.
 - (3). Nature of action or issue in general.
 - (4). Actions by or against husband or wife in representative capacity.
 - (5). Nature of evidence in general.
 - (6). Fraudulent acts or conveyances.
 - (7). Offenses and criminal prosecutions.
 - (8). Compelling husband or wife to testify.
53. — Effect of statutes removing disqualification.
 - (1). In general.
 - (2). Effect of statutory removal of incompetency on ground of interest.
 - (3). Offenses and criminal prosecutions.
 - (4). Cross-examination.
 - (5). Testimony by either husband or wife, but not both.
54. — Testimony for or against husband or wife in general.
55. — Separate interests of husband and wife.
56. — Agency of husband or wife for the other.

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II. COMPETENCY.(Cont'd)

- (1). In general.
- (2). Existence of agency.
- (3). Nature of action or issue and scope of evidence.
57. — Marriage, nonaccess, and illegitimacy of children.
- 58.1. — Adultery.
- 58.2. — Bigamy.
- 58.3. — Criminal conversation.
- 58.4. — Alienation of affections.
59. — Actions between husband and wife in general.
60. — Actions for divorce or annulment of marriage.
 - (1). In general.
 - (2). Evidence admissible in general.
 - (3). Marriage and adultery.
61. — Prosecutions for offenses by husband or wife against the other.
 - (1). In general.
 - (2). Abandonment.
 - (3). Bigamy.
62. — Consent of husband or wife to admission of testimony by the other.
63. — Effect of invalidity of marriage.
64. — Effect of divorce.
 - (1). In general.
 - (2). Adultery.
65. — Effect of death of husband or wife.
66. Parent and child.
67. Attorney and client.
68. Judges, jurors, and officers acting at trial, as witnesses.
69. Judges, jurors, and judicial officers, as witnesses as to proceedings by or before them.
70. — In general.
71. — Judges, justices of the peace, and other magistrates.
72. — Grand jurors.
73. — Trial jurors.
74. — Commissioners, masters, referees, and arbitrators.
75. Objections to competency in general.
76. Waiver of objections to competency.
 - (1). In general.
 - (2). Effect of examining witness by party objecting.
 - (3). Husband and wife.

II. COMPETENCY.(Cont'd)

77. Examination of witness as to competency.
78. Evidence as to competency in general.
79. Determination as to competency, and effect of incompetency.
 - (1). In general.
 - (2). Age and maturity of mind.
 - (3). Questions of law and fact.
 - (4). Review.
- (B) PARTIES AND PERSONS INTERESTED IN EVENT.
80. Nature and grounds of incompetency in general.
81. Constitutional and statutory provisions.
82. Parties of record in civil actions and proceedings.
83. — In general.
84. — Nominal and unnecessary parties.
85. — Representative or official capacity.
86. — Witnesses for or against other parties.
87. Defendants in criminal prosecutions.
88. — In general.
89. — Separate trials of defendants jointly indicted.
90. — Separate indictments for same offense.
91. Interest of party or other person.
92. — In general.
94. — Interest of persons other than parties in general.
95. — Interest jointly with party.
96. — Interest separate or different from that of party.
97. — Liability on warranty or other liability over.
98. — Interest arising from particular obligations or transactions.
99. — Interest of member, stockholder, or officer of corporation party.
100. — Interest of agent, employee, or other representative.
101. — Liability for costs.
102. — Interest in criminal prosecution of person injured, prosecutor, informer, or detective or other officer.
103. — Interest in record as evidence in other proceedings.

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II. COMPETENCY.(Cont'd)

104. — Time and manner of acquiring interest.
105. — Balance of interest as between adverse parties.
106. Husband or wife of party or other person interested.
 - (1). In general.
 - (2). Criminal prosecutions.
107. Testimony for or against interest.
108. Testimony admissible notwithstanding interest.
109. — In general.
110. — Proof of preliminary and collateral matters.
111. — Proof as to damages after establishment of loss or injury and liability therefor.
112. Transfer, release, or extinguishment of interest.
113. Release or substitution of or indemnity against liability.
114. Determination of liability of codefendant by dismissal, default, or separate verdict or judgment.
115. Effect of statutory removal of incompetency in general.
 - 115.1. — In general.
116. — Civil actions and proceedings.
117. — Criminal prosecutions.
118. Effect of admission of testimony of adverse party.
119. Effect of calling or examination as witness by adverse party.
120. Consent of parties to testimony.
121. Objections to competency on ground of interest.
122. Waiver of objections.
123. Evidence as to interest.
124. Determination as to competency as affected by interest.

(C) "DEAD MAN'S" STATUTES AND RULES.

125. Nature and grounds of exclusion in general.
126. Constitutional and statutory provisions.
127. Actions and proceedings in which testimony is excluded.
128. — In general.

II. COMPETENCY.(Cont'd)

129. — Representative or other capacity, or title or interest of party.
130. — Possibility of judgment for or against party in particular capacity or right.
131. — Probate or contest of will.
132. — Appointment or removal of executor, administrator, guardian, or trustee.
133. — Claim or demand against estate of decedent or incompetent person.
134. — Accounting of executor, administrator, guardian, or trustee.
135. — Determination of validity or construction of deed, will, or codicil.
136. — Determination of rights by descent or devolution from decedent.
137. Parties and other persons whose testimony is excluded.
138. — In general.
139. — Parties of record.
 - (1). In general.
 - (2). Who are parties.
 - (3). Parties not served and effect of default or dismissal.
 - (4). Effect of release, assignment, or withdrawal.
 - (5). Interest in general and nominal or unnecessary parties.
 - (6). Effect of disclaimer.
 - (7). Adverse interest.
 - (8). Party deriving title or interest from deceased in general.
 - (9). Legatee, devisee, heir, or distributee.
 - (10). Executor or administrator.
 - (11). Surviving spouse.
 - (12). Guardian or next friend.
 - (13). Trustee and beneficiary.
 - (14). Parties to bills and notes.
 - (15). Mortgagor and mortgagee.
 - (16). Partners.
140. — Persons interested in event.
 - (1). In general.
 - (2). Nature and extent of interest in general.
 - (3). Adverse interest.
 - (4). Relationship of witness to party or person interested.

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II. COMPETENCY.(Cont'd)

- (5). Interest in property in general.
- (6). Legatee or devisee.
- (7). Heir, distributee, or next of kin.
- (8). Executor or administrator.
- (9). Husband and wife.
- (10). Surviving spouse.
- (11). Guardian and ward.
- (12). Trustee and beneficiary.
- (13). Parties to bills and notes.
- (14). Principal and surety or guarantor.
- (15). Mortgagor and mortgagee.
- (16). Principal and agent or other representative.
- (17). Partners.
- (18). Creditors.
- (19). Transfer, release, or extinguishment of interest.
- 141. — Agent or other representative of party or person interested.
- 142. — Member, stockholder or officer of corporation or association party or interested.
- 143. — Grantor, assignor, or other person from whom party derives title or interest.
 - (1). In general.
 - (2). Grantor or vendor.
 - (3). Assignor.
 - (4). Transferrer of bill, note, or mortgage.
 - (5). Husband and wife.
- 144. — Surviving party to contract or other transaction or cause of action.
 - (1). In general.
 - (2). Parties of record and interest in event.
 - (3). Adverse party.
 - (4). Surviving party to contract.
 - (5). Parties to bills and notes.
 - (6). Grantor and grantee or vendor and vendee.
 - (7). Trustee and beneficiary.
 - (8). Donor and donee.
 - (9). Mortgagor and mortgagee and lessor and lessee.
 - (10). Executor, administrator, or heir.
 - (11). Surviving spouse.
 - (12). Principal and agent.

II. COMPETENCY.(Cont'd)

- (13). Member, stockholder, or officer of corporation.
- (14). Joint parties in general.
- (15). Surviving partners.
- 145. — Representative, survivor, or successor of person deceased or incompetent, as witness in behalf of estate represented or in his own interest.
- 146. — Husband or wife of party or other person excluded from testifying.
- 147. Parties as against whom testimony is excluded.
- 148. — In general.
- 149. — Executor, administrator, guardian, trustee, or other representative of estate of person deceased or incompetent.
 - (1). In general.
 - (2). Executor, administrator, or trustee.
- 150. — Grantee, assignee, devisee, legatee, heir, distributee, or other person deriving title or interest from deceased or incompetent person.
 - (1). In general.
 - (2). Grantee or assignee.
 - (3). Legatee, devisee, or heir.
 - (4). Widow.
 - (5). Creditors.
- 152. — Survivor of joint parties to contract or other transaction or cause of action.
- 153. — Party as to whom person deceased or incompetent acted in representative or fiduciary relation.
- 154. — Principal of agent deceased or incompetent.
- 155. — Parties to whom interest of witness is opposed.
- 156. — Parties themselves incompetent to testify.
- 157. Subject-matter of testimony.
- 158. — In general.
- 159. — Transactions or communications between witness and person subsequently deceased or incompetent.
 - (1). In general.
 - (2). Nature of testimony in general.

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II. COMPETENCY.(Cont'd)

- (3). What constitutes transaction in general.
 - (4). Occupancy of land, and payment and collection of taxes or rent.
 - (5). Delivery of deeds and property.
 - (6). Demand, notice, and knowledge.
 - (7). Gift.
 - (8). Contracts in general.
 - (9). Services and value thereof.
 - (10). Supplies and value thereof.
 - (11). Agency.
 - (12). Partnership transactions.
 - (13). Payment or transmission of money.
 - (14). Physical condition and mental capacity.
160. — Transactions or communications between person other than witness and person subsequently deceased or incompetent.
- (1). In general.
 - (2). Interest of or participation by witness or his agent.
161. — Transactions or communications between witness and other person in presence of person subsequently deceased or incompetent.
162. — Transactions or communications between witness and agent competent to testify.
163. — Admissions or other statements by person subsequently deceased or incompetent.
164. — Communications or instruments in writing.
- (1). In general.
 - (2). Lost instruments.
 - (3). Proof of handwriting.
 - (4). Letters and contents thereof.
 - (5). Bonds and assignment thereof.
 - (6). Bills and notes in general.
 - (7). Consideration of bill or note.
 - (8). Indorsement of bill or note.
 - (9). Deeds.
 - (10). Mortgages and assignment thereof.
 - (11). Execution and contents of will.
165. — Statements and books of account.

II. COMPETENCY.(Cont'd)

166. — Matters equally within knowledge of witness and person subsequently deceased or incompetent.
167. — Matters occurring before death or incompetency of party to contract or other transaction or cause of action.
168. — Matters occurring after death or incompetency of party to contract or other transaction or cause of action.
170. Nature and effect of testimony.
171. — In general.
172. — For or on behalf of witness himself or of his successor in title or interest.
173. — For or on behalf of coparty.
174. — For or against adverse party.
175. Effect of admission or availability of evidence on behalf of adverse party in general.
- (1). In general.
 - (2). Effect of admission of deposition of person subsequently deceased or incompetent.
 - (3). Interest of witness.
176. Effect of admission of testimony of adverse party.
- (1). In general.
 - (2). Transactions or communications with deceased.
 - (3). Scope of testimony in general.
 - (4). Testimony of assignor or of surviving party to contract or thing in action or person succeeding to rights of deceased.
177. Rebuttal of evidence on behalf of adverse party.
178. Effect of calling or examination as witness by adverse party.
- (1). In general.
 - (2). Testimony given at instance of party desiring to testify.
 - (3). Cross-examination by adverse party after direct examination.
 - (4). Taking or introduction in evidence by adverse party of deposition or testimony at former hearing.
180. Objections to admissibility.
181. Waiver of objections.

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II. COMPETENCY.(Cont'd)

- 182. Evidence as to nature and circumstances of transaction, communication, or other subject-matter.
- 183. Determination as to admissibility.
- 183.5. Weight of testimony admitted and corroboration.

(D) CONFIDENTIAL RELATIONS AND PRIVILEGED COMMUNICATIONS (OBSOLETE, SEE PRIVILEGED COMMUNICATIONS AND CONFIDENTIALITY).

III. EXAMINATION.

(A) TAKING TESTIMONY IN GENERAL.

- 224. Order, course, and extent of examination.
- 225. Control of court in general.
- 226. Discretion of court.
- 227. Oath or affirmation.
- 228. Mode of testifying in general.
- 229. Deaf or mute witnesses.
- 230. Witnesses ignorant of language, and interpreters.
- 231. Testimony in foreign language.
- 232. Testimony of party in civil case on his own behalf.
- 233. Testimony of accused in criminal prosecution.
- 234. Examination of adverse party in general.
- 235. Statement by witness or testimony without questions.
- 236. Questions in general.
 - (1). In general.
 - (2). Preliminary questions.
 - (3). Interruption of testimony by questions.
 - (4). Indefinite and general questions.
 - (5). Question as affected by objectionable answer.
 - (6). Questions objectionable in part.
 - (7). Questions calling for answers not based on personal knowledge.
- 237. Questions assuming facts.
 - (1). In general.
 - (2). Facts not disputed.
 - (3). Facts not proved.
 - (4). Facts in issue.
- 239. Leading questions.
- 240. — In general.
 - (1). In general; right to use.

III. EXAMINATION.(Cont'd)

- (2). Discretion of court.
- (3). What are leading questions in general.
- (4). Specific questions in general.
- (5). Questions as to statements or suggestions previously made by witness.
- (6). Questions as to statements or directions by or conversations between other persons.
- (7). Materiality of questions.
- (8). Questions involving conclusions or matters of opinion.
- (9). Questions in the alternative.
- 241. — Preliminary or introductory questions.
- 242. — Suggestions in aid of recollection.
- 243. — Ability of witness to communicate.
- 244. — Unwilling or hostile witnesses.
- 245. Repetition of questions.
- 246. Examination by court or jury.
 - (1). In general.
 - (2). Calling and examination by court.
 - (3). Leading questions.
 - (4). Repetition of questions by court.
 - (5). Recalling witness for examination.
- 247. Answers in general.
- 248. Responsiveness of answer.
 - (1). In general.
 - (2). Particular answers.
 - (3). Answers responsive in part.
- 249. Remarks by witness.
- 250. Impressions of witness.
- 251. Reasons for knowledge or recollection of witness.
- 252. Use of documents, maps, plats, diagrams, or other matters to explain testimony.
- 253. Refreshing memory.
- 253.1. — In general.
- 254. — Grounds and purposes in general.
- 255. — Memoranda or other writings which may be used.
 - (1). In general.
 - (2). Memoranda made by or in the presence of witness.
 - (2.1). — In general.
 - (3). — Time of making memoranda.

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III. EXAMINATION.(Cont'd)

- (4). Memoranda made by another.
- (5). Copies of or extracts from records or memoranda.
- (6). Papers in legal proceedings.
- (7). Books of account and entries therein.
- (8). Records.
- (9). Testimony previously given by witness.
- (10). Testifying from memory after refreshing memory.
- (11). Time of making memoranda.
- 256. — Inspection of writing by adverse party.
- 257. — Admissibility of writing as evidence.
- 257.10. — Testimony refreshed by hypnosis or drugs.
- 258. Testimony from memoranda or other writings.
- 259. Testimony of stenographer from notes.
- 260. Calling attention to and explanation of former statements or testimony.
- 261. Recalling witnesses.
- 262. — In general.
- 263. — Explanation, correction, or restatement of former testimony.
- 264. — Examination as to new matter.
- 265. Examination after use of deposition.

(B) CROSS-EXAMINATION.

- 266. Right to cross-examine and re-examine in general.
- 266.5. Effect of cross-examination or testimony.
- 267. Control and discretion of court.
- 268. Scope and extent of cross-examination in general.
 - (1). In general.
 - (2). Knowledge or source of information.
 - (3). Drawing out whole of transaction or conversation.
 - (4). Time of occurrence or condition.
 - (5). Truth of direct testimony.
 - (6). Facts inconsistent with testimony.
 - (7). Conduct inconsistent with testimony.

III. EXAMINATION.(Cont'd)

- (8). Statements and affidavits by witness or others.
- (9). Conversations between witness and others.
- (10). Particular facts included in general statement by witness.
- (11). Cross-examination of voluntary statements by witness.
- (12). Sale, consideration and related circumstances.
- (13). Value of property.
- (14). Consideration for note.
- (15). Ownership or interest in property.
- (16). Reasons for action testified to by witness.
- (17). Witness's identity, address, etc.; matters endangering witness.
- 269. Limitation of cross-examination to subjects of direct examination.
 - (1). In general.
 - (2). Limitation as to particular subjects of inquiry.
 - (2.1). — In general.
 - (3). — Time of occurrence or condition.
 - (4). — Prior conversations or statements.
 - (5). — Testimony at preliminary examination or former trial.
 - (6). — Cause of accident or injury, and precautions against.
 - (7). — Threats, preparation, or previous attempts or difficulties.
 - (8). — Conduct of business or occupation.
 - (9). — Management and operation of machinery, railroad, or other conveyance.
 - (10). — Quantity, quality, value, or cost.
 - (11). — Ownership or interest in property.
 - (12). — Bodily health, physical condition, mental condition, or intoxication.
 - (13). — Personal and domestic relations.
 - (14). — Character of deceased.

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III. EXAMINATION.(Cont'd)

- (15). Introduction of matters in defense or rebuttal in general.
- 270. Cross-examination as to irrelevant, collateral, or immaterial matters.
 - (1). In general.
 - (2). Particular matters as subjects of cross-examination.
 - (3). Cross-examination as to immaterial testimony in chief.
- 271. Cross-examination as to writings.
 - (1). In general.
 - (2). Necessity for production of writing.
 - (3). Admissibility of writing.
 - (4). Manner of conducting cross-examination.
- 272. Admissibility on cross-examination of writing used on direct examination.
- 273. Cross-examination of witness charged with fraud.
- 274. Cross-examination of witness to character of party.
 - (1). In general.
 - (2). Questions as to particular reports heard by witness.
- 275. Cross-examination of party in general.
 - (1). In general.
 - (2). Particular subjects of inquiry.
 - (2.1). — In general.
 - (3). — Facts inconsistent with testimony.
 - (4). — Fraud.
 - (5). — Limitation to subjects of direct inquiry.
 - (6). — Irrelevant, collateral, or immaterial matters.
 - (7). — Writings.
 - (8). Cross-examination of party or employee examined as a witness by adverse party.
- 276. Examination of adverse party or witness as on cross-examination.
- 277. Cross-examination of accused in criminal prosecutions.
 - (1). In general.
 - (2). Particular subjects of inquiry.
 - (2.1). — In general.
 - (3). — Facts inconsistent with testimony.

III. EXAMINATION.(Cont'd)

- (4). — Limitation to subjects of direct examination.
 - (5). — Irrelevant, collateral, or immaterial matters.
 - (6). — Writings.
 - (7). Recalling for further cross-examination.
 - 278. Cross-examination of accomplices and codefendants in criminal prosecutions.
 - 279. Questions on cross-examination.
 - 280. — In general.
 - 281. — Questions assuming facts.
 - 282. — Leading questions.
 - 282.5. — Repetition of questions and questions calling for repetition of answers.
 - 282.9. — Cross-examination by court.
 - 283. Recalling witness for cross-examination.
 - 284. Effect of refusal to submit to cross-examination.
- ##### (C) RE-EXAMINATION.
- 285. Redirect examination.
 - 285.1. — In general.
 - 286. — Scope and extent.
 - (1). In general.
 - (2). Discretion of court.
 - (3). Leading questions.
 - (4). Scope and extent in general.
 - (5). Introduction of writings in evidence.
 - (6). Examination as to writings.
 - 287. — Explanation of testimony on cross-examination.
 - (1). In general.
 - (2). Discretion of court.
 - (3). Motives or reasons for acts or statements detailed on cross-examination.
 - (4). Drawing out whole of transaction or conversation in general.
 - 288. — New matter on cross-examination.
 - (1). In general.
 - (2). Particular subjects of inquiry.
 - 289. — Irrelevant, collateral, or immaterial matters.
 - 290. — Repetition of testimony on direct or cross-examination.
 - 291. Recross-examination.

410. WITNESSES

(D) PRIVILEGE OF WITNESS.

- 292. Nature and grounds of privilege to refuse to answer in general.
- 293. Constitutional and statutory provisions.
- 293.5. Proceedings to which privilege applies.
- 294. Answer tending to subject witness to civil action or pecuniary loss.
- 295. Answer tending to subject witness to penalty or forfeiture.
- 296. Answer tending to disgrace witness or render him infamous.
- 297. Self-incrimination.
 - (1). In general.
 - (2). Direct, indirect or partial disclosure.
 - (3). Motive for claiming privilege; protection of others.
 - (4). Form and purpose of inquiry.
 - (4.1). — In general.
 - (5). — Cross-examination and impeachment.
 - (6). — Grand jury investigation.
 - (7). — Legislative or official investigation.
 - (8). Particular subjects of inquiry.
 - (8.1). — In general.
 - (9). — Fraud or perjury.
 - (10). — Gaming, sex and liquor.
 - (11). — Government and officers, offenses involving.
 - (12). — Personal identity and associations.
 - (13). Particular circumstances affecting danger of prosecution.
 - (13.1). — In general.
 - (14). — Prosecution in different jurisdiction.
- 298. Privilege as to production of documents.
- 298.5. Privilege as to physical examination.
- 299. Privilege of accused in criminal prosecution.
- 300. — In general.
- 301. — Cross-examination.
- 302. Caution to witness.
- 303. Effect of release or discharge from liability.
- 304. Effect of statutory protection of witness from use of evidence against himself.
 - (1). In general.

III. EXAMINATION.(Cont'd)

- (2). Constitutionality of provisions in general.
- (3). Sufficiency of statutory protection.
- (4). Persons entitled to immunity.
- 305. Waiver of privilege.
 - (1). In general.
 - (2). Waiver by accused in criminal prosecutions.
- 306. Persons entitled to claim privilege.
- 307. Claim of privilege.
- 308. Determination of right to privilege.
- 309. Effect of refusal to answer.
- 310. Remedies for protection of witness against subsequent use of evidence.

IV. CREDIBILITY AND IMPEACHMENT.

(A) IN GENERAL.

- 311. Grounds of credibility in general.
- 312. Means of knowledge of witness.
- 313. Recollection of witness.
- 315. Manner of testifying.
- 316. Effect of mistaken or inaccurate testimony.
- 317. Falsus in uno, falsus in omnibus.
 - (1). In general.
 - (2). Willfulness or mistake.
 - (3). Materiality of false testimony.
 - (4). Contradiction or corroboration on other points.
- 318. Corroboration of unimpeached and uncontradicted witness.
- 319. Right to impeach witness in general.
- 320. Right to impeach one's own witness.
- 321. — In general.
- 322. — Witness whom party is compelled to call.
- 323. — Witness hostile to party calling him.
- 324. — Party called as witness by adversary.
- 325. — Witness cross-examined as to matter not subject of direct examination.
- 326. Right to impeach impeaching witness.
- 327. Impeachment of capacity of witness.
- 328. Impeachment of knowledge or recollection of witness.
- 329. Cross-examination to test reliability of witness.

410. WITNESSES

IV. CREDIBILITY AND IMPEACHMENT.(Cont'd)

330. Cross-examination to discredit witness or disparage testimony in general.

(1). In general.

(2). Inquiry as to conversation between witness and other person relative to facts.

(3). Personal affairs, acts, and transactions of witness not pertaining to issues.

331. Effect of refusal to answer on cross-examination.

331.5. Competency of impeaching evidence in general.

Excludes expert opinion evidence, see CRIMINAL LAW §474.3.

332. Recalling witness for purpose of impeachment.

(B) CHARACTER AND CONDUCT OF WITNESS.

333. Character as ground of impeachment in general.

334. Witnesses who may be impeached as to character.

335. — In general.

336. — Party as witness in civil action or proceeding.

337. — Accused as witness in criminal prosecution.

(.5). In general.

(1). Right to impeach.

(2). Character and reputation in general.

(3). Reputation as to veracity.

(4). Particular acts or facts.

(5). Former accusation or conviction of crime.

Excludes whether adjudication is a criminal conviction and effect on conviction of subsequent events, see §345(5-11), extent of cross-examination concerning conviction, see §350, and competency of evidence offered to prove conviction, see §359.

(7). — In general.

(8). — Discretion.

(9). — Felonies or misdemeanors; ordinance violations.

(10). — Extent of punishment.

(11). — Moral turpitude; infamous crimes.

(12). — Relationship to honesty; crimen falsi.

IV. CREDIBILITY AND IMPEACHMENT.(Cont'd)

(13). — Offenses committed in other jurisdictions.

(14). — Particular offenses.

(15). — Fraud or forgery.

(16). — Larceny or shoplifting.

(17). — Receiving or possessing stolen goods.

(18). — Perjury or bribery.

(19). — Burglary or robbery.

(20). — Assault and battery; homicide.

(21). — Drug related offenses.

(22). — Sex offenses.

(23). — Motor vehicle offenses.

(24). — Weapons offenses.

(25). — Prejudice or unfairness; balancing probative value.

(26). — Effect on defendant's decision to testify.

(27). — Similarity to charged offense.

(28). — Time of prior conviction; remoteness.

(29). — Admission or denial of conviction.

(30). — Extent of showing; number of offenses.

(31). — Determination; hearing and findings.

(32). — Evidence.

338. Character and reputation in general.

339. Particular traits of character or habits.

340. — In general.

(1). In general.

(2). Religious faith or moral sense.

(3). Unchastity.

341. — Relevancy to issues.

342. Reputation as to veracity.

343. Place and time of acquiring reputation.

344. Particular acts or facts.

(1). In general.

(2). Immoral or unlawful acts or conduct in general.

(3). Violation of marriage obligations.

(4). Business or occupation.

(5). Fraud or dishonesty.

345. Accusation or conviction of crime.

(1). In general.

410. WITNESSES

IV. CREDIBILITY AND IMPEACHMENT.(Cont'd)

- (2). Particular offenses.
- (3). Confinement in reformatory.
- (4). Conviction, acquittal, and pardon.
- (5). — In general.
- (6). — Pleas of guilty or nolo contendere.
- (7). — Arrest or charge without conviction.
- (8). — Pardon, parole, probation, expungement or suspension of sentence.
- (9). — Juvenile, youthful offender or military adjudications.
- (10). — Pendency or possibility of appeal; posttrial motions.
- (11). — Validity of conviction; reversal or setting aside.
- 346. Conduct of witness with reference to cause.
- 347. Conduct of witness inconsistent with testimony; silence.
- 348. Cross-examination for purpose of impeachment.
- 349. — In general.
- 350. — Accusation or conviction of crime.
- 351. Laying foundation for impeaching evidence.
- 352. Competency of impeaching evidence in general.
- 353. Competency of impeaching witnesses as to character or reputation.
- 354. — In general.
- 355. — Knowledge or means of knowledge of impeaching witness.
- 356. Examination of impeaching witnesses as to character or reputation.
- 356.1. — In general.
- 357. — Direct examination.
- 358. — Cross-examination and re-examination.
- 359. Evidence of accusation or conviction of crime.
- 360. Rebuttal of evidence impeaching character.
- 361. Evidence to sustain character of witness impeached.
 - (1). In general.
 - (2). Of witness accused or convicted of crime.

IV. CREDIBILITY AND IMPEACHMENT.(Cont'd)

- (3). Contradiction of record of conviction.
- (4). Competency of sustaining witnesses.
- 362. Effect of impeachment of character.
 - (C) INTEREST AND BIAS OF WITNESS.**
- 363. Interest as ground of impeachment in general.
 - (1). In general.
 - (2). Showing interest or bias of one's own witness.
- 364. Interest of party of record in civil action or proceeding.
- 365. Interest of defendant in criminal prosecution.
- 366. Interest of accomplice or codefendant in criminal prosecution.
- 367. Interest in event of witness not party to record.
 - (1). In general.
 - (2). Assisting party in conduct of action or prosecution.
 - (3). Detectives and others employed to testify or procure evidence.
- 368. Relationship to party.
- 369. Employment by or other contractual relation with party.
- 370. Friendly or unfriendly relations with or feeling toward party.
 - (1). In general.
 - (2). Relations with or feelings toward family, relatives, or attorney of party.
 - (3). Instigation or maintenance of prosecution or litigation.
 - (4). Sexual relations.
 - (5). Business relations or competition.
 - (6). Relations with or feelings toward person killed by defendant in prosecution for homicide.
- 371. Bias or prejudice of impeaching witness toward witness impeached.
- 372. Cross-examination to show interest or bias.
 - (1). In general.
 - (2). Inquiry as to particular acts or facts tending to show interest or bias.

410. WITNESSES

IV. CREDIBILITY AND IMPEACHMENT.(Cont'd)

- (3). Conclusiveness of answers on cross-examination.
- 373. Laying foundation for impeaching evidence.
- 374. Competency of impeaching evidence.
 - (1). In general.
 - (2). Declarations, statements, or admissions of witness.
- 375. Examination of impeaching witnesses.
- 376. Rebuttal of evidence of interest or bias.
- 377. Evidence to show want of interest or freedom from bias.
- 378. Effect of impeachment for interest or bias.
- (D) INCONSISTENT STATEMENTS BY WITNESS.
- 379. Inconsistency of statements as ground of impeachment in general.
 - (1). In general.
 - (2). Nature of statement in general.
 - (3). Statements of conclusions or opinions.
 - (4). Written statements or instruments.
 - (4.1). — In general.
 - (5). — Letters.
 - (6). — Official documents, records and proceedings.
 - (7). — Judicial records and proceedings.
 - (8). Former testimony of witness.
 - (8.1). — In general.
 - (9). — Testimony before grand jury or at preliminary investigation or coroner's inquest.
 - (10). — Depositions and interrogatories.
 - (11). Time of making statements and circumstances connected therewith.
 - (12). Statements by third persons in presence of witness.
- 380. Witnesses who may be impeached by inconsistent statements.
 - (1). In general.
 - (2). Accused in criminal prosecution.
 - (3). Impeachment of testimony of deceased or absent witness.

IV. CREDIBILITY AND IMPEACHMENT.(Cont'd)

- (4). Stipulation as to testimony of absent witness.
- (5). Inconsistent statements of one's own witness.
 - (5.1). — In general.
- (6). — Party called as witness by adversary.
- (7). — Witness whom party is compelled to call.
- (8). — Cross-examination as to matter not subject of direct examination.
- (9). — Witness for both parties.
- 381. Testimony subject to impeachment.
- 382. — In general.
- 383. — Irrelevant, collateral, or immaterial matters.
- 384. — Conclusions and matters of opinion.
- 386. Nature and extent of inconsistency.
- 387. Cross-examination as to inconsistent statements.
- 388. Laying foundation for proof of inconsistent statements.
 - (1). In general.
 - (2). Necessity of laying foundation.
 - (2.1). — In general.
 - (3). — Party as witness.
 - (4). — Impeachment of one's own witness.
 - (5). Scope of cross-examination for purpose of laying foundation.
 - (6). Foundation for impeachment of deposition, affidavit, or other written testimony.
 - (7). Foundation for impeachment by written statements.
 - (7.1). — In general.
 - (8). — Depositions or minutes of testimony at former trial or hearing.
 - (9). Certainty and definiteness of inquiry.
 - (9.1). — In general.
 - (10). — Time, place, circumstances, and person to whom statements were made.
- 389. Admission or denial by witness of making of inconsistent statements.

411. WOODS AND FORESTS

IV. CREDIBILITY AND IMPEACHMENT.(Cont'd)

- 390. Competency of evidence of inconsistent statements in general.
- 390.1. — In general.
- 391. — Oral statements, and examination of impeaching witnesses.
- 392. — Written statements or instruments.
 - (1). In general.
 - (2). Portion of writing.
- 393. — Former testimony of witness.
 - (1). In general.
 - (2). Stenographer's notes or transcript.
 - (3). Testimony before grand jury or at preliminary investigation or coroner's inquest.
 - (4). Depositions.
 - (5). Bills of exceptions.
 - (6). Portion of writing or testimony.
- 394. Rebuttal of evidence of inconsistent statements.
- 395. Evidence as to statements consistent with testimony.
- 396. Explanation of inconsistency.
 - (1). In general.
 - (2). Right to show whole statement.
 - (3). Right of impeached witness to give version of statement.
- 397. Effect of impeachment by inconsistent statements.

(E) CONTRADICTION.

- 398. Right to contradict testimony in general.
 - (1). In general.
 - (2). Laying foundation for contradiction.
 - (3). Right of cross-examiner to contradict answers elicited on cross-examination.
- 399. Right to contradict testimony of one's own witness.
- 400. — In general.
 - (1). In general.
 - (2). Party called as witness by adversary.
- 401. — Witness cross-examined as to matter not subject of direct examination.
- 402. — Disproving facts testified to by witness.
- 403. Testimony subject to contradiction.
- 404. — In general.

IV. CREDIBILITY AND IMPEACHMENT.(Cont'd)

- 405. — Irrelevant, collateral, or immaterial matters.
 - (1). In general.
 - (2). Party to civil action or accused in criminal prosecution.
- 406. Competency of contradictory evidence.
- 407. Rebuttal of contradictory evidence.
- 408. Explanation of contradiction.
- 409. Effect of contradiction.

(F) CORROBORATION.

- 410. Right to corroborate impeached or contradicted witness.
- 411. Testimony subject to corroboration.
- 412. — In general.
- 413. — Irrelevant, collateral, or immaterial matters.
- 414. Competency of corroborative evidence.
 - (1). In general.
 - (2). Former statements corresponding with testimony.
- 415. Rebuttal of corroborative evidence.
- 416. Effect of corroboration.

411. WOODS AND FORESTS

SUBJECTS INCLUDED

- Trees not grown for their fruit or other annual products
- Protection and promotion of the growth of such trees and of forests
- Nature and incidents of rights of property in growing trees in general

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

- Agriculture, promotion in general, see AGRICULTURE
- Logs and timber, trees considered as, and transfer of timber lands or of timber ready for logging, see LOGS AND LOGGING
- Particular estates in land, rights and liabilities incident to, see LIFE ESTATES, REMAINDERS and other specific topics

411. WOODS AND FORESTS

Public lands, trees on, see PUBLIC LANDS

Specific remedies for cutting down or injuring trees, see TRESPASS, WASTE

Wilderness areas, see ENVIRONMENTAL LAW

1. Nature of property.
2. Ownership in general.
4. Effect of sale or conveyance of land.
5. Power to protect and regulate.
6. Statutory provisions.
7. Forest commissions and other officers.
8. Forest reservations, preserves, or parks.
Excludes wilderness areas, see ENVIRONMENTAL LAW ¶44.
10. Offenses.
11. Penalties for violations of regulations.
12. Criminal prosecutions.

413. WORKERS' COMPENSATION

SUBJECTS INCLUDED

Compensation provided by Workers' Compensation Acts, for injury to or death of employees arising out of and in course of their employments

Persons and employments within such acts

Persons entitled to, and liable for, compensation

Compensability of injuries and compensation payable

Public funds for payment of compensation and contributions thereto

Workers' compensation insurance or self-insurance

Administrative boards, commissions, and officers

Proceedings to secure compensation and review thereof

Payment of compensation, and assignment or transfer of rights

Acceptance or rejection of such acts and effect of acts on other rights and liabilities

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Admiralty, jurisdiction and procedure, see ADMIRALTY

Black lung benefits, see LABOR AND EMPLOYMENT

Disability benefits, see LABOR AND EMPLOYMENT, and MUNICIPAL CORPORATIONS and other government topics for public employment benefits

Employer-employee relation generally, and liability and damages recoverable in ordinary civil actions for injuries to employees, see LABOR AND EMPLOYMENT, DAMAGES

Employers' liability insurance, see INSURANCE

Interstate commerce, applicability of state laws to persons engaged in, see COMMERCE

Unemployment compensation, see UNEMPLOYMENT COMPENSATION

I. NATURE AND GROUNDS OF EMPLOYER'S LIABILITY, ¶1-73.

II. WHAT LAW GOVERNS, ¶74-100.

III. EMPLOYMENTS INCLUDED, ¶101-185.

(A) IN GENERAL, ¶101-113.

(B) PARTICULAR EMPLOYMENTS, ¶114-185.

IV. EMPLOYERS WITHIN ACTS, ¶186-229.

(A) IN GENERAL, ¶186-194.

(B) PARTICULAR EMPLOYERS, ¶195-229.

V. EMPLOYEES WITHIN ACTS, ¶230-390.

(A) IN GENERAL, ¶230-251.

(B) PARTICULAR CLASSES OF PERSONS IN GENERAL, ¶252-262.

(C) CASUAL EMPLOYEES AND EMPLOYMENT IN TRADE OR BUSINESS OF EMPLOYER, ¶263-294.

1. CASUAL EMPLOYEES IN GENERAL, ¶263-277.

2. EMPLOYMENT IN TRADE OR BUSINESS OF EMPLOYER, ¶278-294.

(D) PARTNERS AND JOINT VENTURERS, ¶295-296.

(E) CORPORATE OFFICERS AND STOCKHOLDERS, ¶297-303.

413. WORKERS' COMPENSATION

V. EMPLOYEES WITHIN ACTS—Cont'd
(F) INDEPENDENT CONTRACTORS,
 § 304-343.

(G) EMPLOYEES OF CONTRACTOR
 OR SUBCONTRACTOR,
 § 344-361.

(H) CHILDREN OR MINORS,
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(I) PUBLIC OFFICERS AND EMPLOY-
 EES, § 374-390.

VI. ACCEPTANCE OR ELECTION TO
 COME UNDER ACT, § 391-409.

VII. COMPENSATION ON DEATH OF
 EMPLOYEE, § 410.1-510.

(A) PERSONS ENTITLED TO BENE-
 FITS, § 410.1-449.

1. IN GENERAL, § 410.1-419.

2. PERSONS IN PARTICULAR RE-
 LATIONSHIPS TO EMPLOYEE,
 § 420.1-429.

3. CONFLICTING CLAIMS, PRIORI-
 TIES, AND APPORTIONMENT,
 § 430.1-439.

4. EFFECT OF DEATH, MARRIAGE,
 COMING OF AGE, CESSATION
 OF DEPENDENCY, OR OTHER
 CHANGE OF CONDITION OF
 PERSON ENTITLED,
 § 440.1-449.

(B) DEATH BENEFITS, § 450.1-459.

(C) DISABILITY COMPENSATION,
 § 460.1-510.

VIII. INJURIES FOR WHICH COMPEN-
 SATION MAY BE HAD,
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(A) NATURE AND CHARACTER OF
 PHYSICAL HARM, § 511-596.

1. IN GENERAL, § 511-520.

2. DISEASES, INFECTIONS, AND
 POISONING, § 521-546.

3. OCCUPATIONAL DISEASES,
 § 547-551.

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 LY IMPAIRED CONDITION,
 § 552-566.

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 CONSEQUENCES, § 567-596.

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 SEQUENCES, § 597-603.

(C) INJURIES ARISING OUT OF AND
 IN COURSE OF EMPLOYMENT
 IN GENERAL, § 604-618.

(D) PARTICULAR CAUSES, CIRCUM-
 STANCES, AND CONDITIONS
 OF INJURY, § 619-770.

1. IN GENERAL, § 619-625.

VIII. INJURIES FOR WHICH COMPEN-
 SATION MAY BE HAD—Cont'd

(D) PARTICULAR CAUSES, CIRCUM-
 STANCES, AND CONDITIONS
 OF INJURY—Cont'd

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 OR PERMISSION, OR IN EMER-
 GENCY, § 626-627.

3. NEGLIGENCE, UNREASONABLE,
 OR VOLUNTARY ACTS, AND
 INCURRENCE OF RISK,
 § 628-631.

4. INJURIES BY ELECTRICITY, EX-
 PLOSIONS, OR BURNS,
 § 632-634.

5. INJURIES FROM OPERATION,
 CARE, OR REPAIR OF VEHI-
 CLES, ELEVATORS OR HOIST-
 ING APPARATUS, § 635-636.

6. INJURIES BY ELEMENTS OR
 ACT OF GOD, § 637-642.

7. STREET ACCIDENTS IN GENER-
 AL, § 643-648.

8. SLIPPING, TRIPPING, OR FALLS,
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413. WORKERS' COMPENSATION

VIII. INJURIES FOR WHICH COMPENSATION MAY BE HAD—Cont'd
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20. INTERVALS OR TEMPORARY CESSATION OF WORK; EMPLOYEE AWAY FROM WORKING PLACE, ☞764-770.

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(B) DISABILITY BENEFITS, ☞836-884.

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1. IN GENERAL, ☞908-931.

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(F) DEDUCTIONS AND OFFSETS, ☞934.1-937.

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IX. AMOUNT AND PERIOD OF COMPENSATION—Cont'd

(G) INCREASE OR REDUCTION OF COMPENSATION—Cont'd

1. MISCONDUCT IN GENERAL

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- XVI. PROCEEDINGS TO SECURE COMPENSATION—Cont'd
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1. IN GENERAL, ☞1687–1694.
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- (T) REVIEW BY COURT, ☞1822–1979.
1. IN GENERAL, ☞1822–1831.
2. VENUE, ☞1832.
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5. PRESENTATION AND RESERVATION BELOW OF GROUNDS OF REVIEW, ☞1845–1866.
6. PARTIES, ☞1867–1871.
7. TAKING AND PERFECTING PROCEEDINGS FOR REVIEW, ☞1872–1892.

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XVI. PROCEEDINGS TO SECURE COMPENSATION—Cont'd

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8. EFFECT OF PROCEEDINGS FOR REVIEW AND SUPERSEDEAS OR STAY, ⚖️1893–1894.

9. RECORD, ⚖️1895–1905.

10. ASSIGNMENTS OF ERROR AND BRIEFS, ⚖️1906–1907.

11. DISMISSAL, WITHDRAWAL, ABANDONMENT, HEARING, AND REHEARING, ⚖️1908–1909.

12. SCOPE AND EXTENT OF REVIEW IN GENERAL, ⚖️1910–1937.

12A. QUESTIONS OF LAW OR FACT, FINDINGS, AND VERDICT, ⚖️1938–1940.

13. DETERMINATION AND DISPOSITION OF PROCEEDING, ⚖️1941–1953.

14. PROCEEDINGS FOR FURTHER REVIEW, ⚖️1954–1977.

15. LIABILITY ON BONDS AND SECURITIES, ⚖️1978–1979.

(U) COSTS AND ATTORNEY FEES, ⚖️1980.1–1989.

1. IN GENERAL, ⚖️1980.1–1980.7.

2. ATTORNEY FEES, ⚖️1980.8–1980.19.

3. PROCEEDINGS, ⚖️1980.20–1989.

XVII. INCREASE, DIMINUTION, TERMINATION, REINSTATEMENT, OR ADDITIONAL AWARD OF DISABILITY COMPENSATION, ⚖️1990–2079.

(A) AWARDS GENERALLY, ⚖️1990–2064.

1. ADJUSTMENT OR TERMINATION OF COMPENSATION, ⚖️1990–2051.

2. REVIEW, ⚖️2052–2064.

(B) AGREEMENTS AND SETTLEMENTS, ⚖️2065–2079.

XVIII. OFFENSES AND PENALTIES, ⚖️2080–2081.

XIX. EMPLOYER'S REPORT OF ACCIDENT AND NOTICE OF DEATH TO BENEFICIARIES, ⚖️2082–2083.

XX. EFFECT OF ACT ON OTHER STATUTORY OR COMMON-LAW RIGHTS OF ACTION AND DEFENSES, ⚖️2084–2254.

(A) BETWEEN EMPLOYER AND EMPLOYEE, ⚖️2084–2141.

XX. EFFECT OF ACT ON OTHER STATUTORY OR COMMON-LAW RIGHTS OF ACTION AND DEFENSES—Cont'd

(A) BETWEEN EMPLOYER AND EMPLOYEE—Cont'd

1. EXCLUSIVENESS OF REMEDIES AFFORDED BY ACTS, ⚖️2084–2102.

2. ELECTION AND WAIVER OF REMEDIES, ⚖️2103–2109.

3. DEFENSES; ABROGATION OR MODIFICATION OF COMMON-LAW DEFENSES, ⚖️2110–2117.

4. NEGLIGENCE OF EMPLOYER AND MEASURE OF DAMAGES, ⚖️2118–2121.

5. ACTIONS, ⚖️2122–2141.

(B) ACTION BY THIRD PERSON AGAINST EMPLOYER, ⚖️2142–2157.

1. IN GENERAL, ⚖️2142–2144.

2. ACTION FOR DEATH BY WRONGFUL ACT, ⚖️2145–2157.

(C) ACTION AGAINST THIRD PERSONS IN GENERAL FOR EMPLOYEE'S INJURY OR DEATH, ⚖️2158–2252.

1. RIGHT OF ACTION OF EMPLOYEE OR REPRESENTATIVE GENERALLY, ⚖️2158–2170.

2. ELECTION OF REMEDIES, ⚖️2171–2187.

3. RIGHT OF EMPLOYER OR INSURER TO REMEDY OF EMPLOYEE OR EMPLOYEE'S REPRESENTATIVE, ⚖️2188–2205.

4. DEFENSES, ⚖️2206–2214.

5. ACTIONS AND PROCEEDINGS, ⚖️2215–2242.

6. AMOUNT AND ITEMS OF RECOVERY, ⚖️2243–2247.

7. RIGHT TO PROCEEDS OF ACTION OR SETTLEMENT, ⚖️2248–2252.

(D) ACTION AGAINST PHYSICIAN OR SURGEON FOR MALPRACTICE, ⚖️2253–2254.

I. NATURE AND GROUNDS OF EMPLOYER'S LIABILITY.

1. In general.

2. Statutory foundation and relation to common law.

3. Relation to insurance.

4. Distinguished from damages.

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I. NATURE AND GROUNDS OF EMPLOYER'S LIABILITY.(Cont'd)

5. Distinguished from other acts and modes of payment.
6. Fault or negligence as element of liability.
7. Age, sex, intelligence, discretion, or motive of employee.
8. Basis in impairment of body or earning capacity.
9. Contractual character.
10. Constitutional provisions.
11. Purpose of legislation.
12. Constitutionality of statutes.
13. — In general.
14. — Effect of treaty.
15. — Retroactive provisions.
16. — Police power in general.
17. — Acceptance or rejection of statute, and election of remedies.
18. — Abrogation or modification of common law defenses.
19. — Abrogation or modification of other rights or remedies.
20. — Place of injury and extraterritorial operation of statutes.
21. — Injuries for which compensation may be had.
22. — Imposition of liability without fault.
23. — Occupational diseases.
24. — Persons affected.
25. — Employments affected.
26. — Compensation in general.
27. — Medical and hospital expenses, nursing, and funeral expenses.
28. — Double, treble, increased, or decreased compensation.
29. — Persons entitled to compensation on death of employee.
30. — Payment, enforcement, and disposition of compensation.
31. — Interest and penalties.
32. — Assignment or transfer of compensation.
33. — Waiver of rights.
34. — Increase, reduction, or termination of compensation.
35. — Insurance and insurance funds.
36. — Subrogation to rights of injured employee.

I. NATURE AND GROUNDS OF EMPLOYER'S LIABILITY.(Cont'd)

37. — Agreements as to compensation, compromise, settlement, and release.
38. — Remedies and procedure in general.
39. — Limitations and notice of claim.
40. — Pleading and evidence.
41. — Award or judgment.
42. — Review.
43. — Costs and fees.
44. Construction and operation of statutes in general.
45. — In general.
46. — Legislative intent in general.
47. — Meaning of language in general.
48. — Construction with reference to effect and consequences.
49. — Construction with reference to common law.
50. — Construction as a whole.
51. — Liberal or strict construction in general.
52. — Construction in favor of employee or beneficiary.
53. — Limitation on rule of liberal construction.
54. Retroactive operation of statutes.
55. — In general.
56. — Persons and employments within acts.
57. — Injuries for which compensation may be had.
58. — Effect of acts on other statutory or common law rights of action and defenses.
59. — Persons entitled on death of employee; rights of dependents, other beneficiaries, or representatives.
60. — Duration and amount of compensation for disability or death in general.
61. — Commutation of payments and lump sum payments.
62. — Expenses of treatment and burial.
63. — Payment of compensation.
64. — Insurance and insurance funds.
65. — Procedure in general.
66. — Notice of injury and claim of compensation.
67. — Limitation of time to present claim or bring action.

413. WORKERS' COMPENSATION

I. NATURE AND GROUNDS OF EMPLOYER'S LIABILITY.(Cont'd)

- 68. — Pleading and evidence.
- 69. — Review in general.
- 70. — Time for review.
- 71. — Fees and costs.
- 72. — Increase, diminution, termination, or reinstatement of compensation.
- 73. Amendment and repeal of statutes in general.

II. WHAT LAW GOVERNS.

- 74. In general.
- 75. Contracts within, and injury outside of, jurisdiction.
- 76. — In general.
- 77. — Necessity and effect of statutory provisions for extraterritorial effect.
- 78. — Contracts intended to be performed in other jurisdiction.
- 79. — Contract intended to be partly performed in other jurisdiction.
- 80. — Temporary or incidental character of work outside of jurisdiction.
- 81. — Determination of place of contract.
- 82. — Residence of parties.
- 83. Injury within, and contract outside of, jurisdiction.
- 84. — In general.
- 85. — Contract intended to be performed within jurisdiction.
- 86. — Contract intended to be performed outside of jurisdiction.
- 87. — Residence of parties.
- 88. — Determination of place of making contract.
- 89. — Temporary or incidental employment within jurisdiction.
- 90. Place of contract and of injury both outside of jurisdiction.
- 90.1. — In general.
- 91. — Applicability of local compensation acts.
- 92. — Applicability and enforcement of compensation acts of other jurisdictions.
- 93. State and federal laws in general.
- 93.5. Preemption.
- 94. Interstate commerce.
- 95. — In general.

II. WHAT LAW GOVERNS.(Cont'd)

- 96. — Necessity and effect of acceptance of workers' compensation acts.
- 97. — Railroads in general.
- 98. — Vessels.
- 99. — Express companies.
- 100. — Telegraph and telephone companies.

III. EMPLOYMENTS INCLUDED.

(A) IN GENERAL.

- 101. In general.
- 102. Definition of terms in general.
- 103. Necessity that employment be hazardous in general.
- 104. Necessity that employment be classified as hazardous.
- 105. — In general.
- 106. — Power to declare employment hazardous.
- 107. Tests of nature of employment in general.
- 108. Nature of business or nature of employee's work as controlling.
- 109. Different employments under same employer; hazardous and nonhazardous employments in same business.
- 110. — In general.
- 111. — Injury in nonhazardous employment.
- 112. — Injury in hazardous employment.
- 113. Hazard with reference to machinery; power-driven machinery in general.

(B) PARTICULAR EMPLOYMENTS.

- 114. In general.
- 115. Ordinance or statutory regulations.
- 116. Pecuniary gain or profit.
- 117. Business, occupation, profession, or trade.
- 118. Industry, industrial enterprise, establishment, or work.
- 119. Manual or mechanical labor or work.
- 120. Clerical work and hazards of business.
- 121. Executive, managerial, or supervisory work.
- 122. Building, construction, and engineering work in general.

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III. EMPLOYMENTS INCLUDED.(Cont'd)

123. Building, constructing, maintaining, repairing, demolishing, or moving building or structure; structural work.
124. — In general.
125. — Maintenance and care of buildings or structures.
126. Ownership and operation of buildings.
127. Canning, preparation of foods, meat packing, and packing houses.
128. Chemicals, explosives, and inflammable materials.
129. Engines and machines and installation or operation thereof.
130. Longshore work.
131. Logging and lumbering.
132. Coal, wood, and lumber yards.
133. Manufactures, manufacturers, and manufacturing enterprises.
134. Mercantile establishments, stores, commission houses, and similar establishments.
135. Printing, binding, lithographing, and similar work.
136. Mills, factories, breweries, refineries, workshops, and similar establishments.
137. — In general.
138. — Mills and milling.
139. — Factories.
140. — Workshop; machine shop.
141. Mining, quarrying, excavating, oil and gas wells, and similar works.
142. Commercial threshing.
143. Dredging, pile driving, and similar work.
144. Garages, service stations, and filling stations.
145. Work of salesmen, solicitors, collectors, and similar work.
146. Washing and cleaning windows and similar work.
147. Work of janitors and watchmen, and similar work.
148. Railroads and street railroads in general.
149. Aerial navigation.
150. Carriage by land or water.
151. Vehicles and operation thereof.
- 151.1. — In general.
152. — Nature of vehicles included in general.
153. — Motor vehicles.

III. EMPLOYMENTS INCLUDED.(Cont'd)

154. — Horse drawn vehicles.
155. — Loading and unloading.
156. — Work not directly connected with operation of vehicle.
157. — Employees using own vehicles.
158. Transfer and storage.
159. Warehousing and storage.
160. Sharp edged tools, grinders, or other implements.
161. Waterworks; gas and electric plants; pipe lines; and electrical work.
162. Work in connection with hoisting apparatus; elevators.
163. Public employment in general.
164. Domestic or household employment.
165. Farm labor; agriculture; ranch work.
166. — In general.
167. — Statutory exemption in general.
168. — Definition of terms in general.
169. — Necessity and effect of election to come under act.
170. — Insurance of farm labor.
171. — As dependent on pay roll or number of employees.
172. — Determination of character of employment in general.
173. — Different employments under same employer in general.
174. — Temporary service on farm.
175. — Use of machinery in general.
176. — Operation of threshing machines.
177. — Operation of corn shredder.
178. — Operation of vehicles.
179. — Dairying.
180. — Horticulture.
181. — Raising and care of live stock, poultry, and similar work.
182. — Turpentine business.
183. — Lumbering, wood-sawing, and similar work.
184. — Construction, repair, or demolition of building, improvement, or structure.
185. — Ranch work.

IV. EMPLOYERS WITHIN ACTS.

(A) IN GENERAL.

186. In general.

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IV. EMPLOYERS WITHIN ACTS. (Cont'd)

- 187. Statutory employers.
- 188. Hiring by agent or another employee.
- 189. — In general.
- 190. — Authority to employ.
- 191. — Estoppel or ratification.
- 192. — Liability of undisclosed principal, or agent.
- 193. Change of employer.
- 194. Insurance of employer performing labor.

(B) PARTICULAR EMPLOYERS.

- 195. In general.
- 196. Number of employees.
- 197. — In general.
- 198. — Who may be counted as employees.
- 199. — Nature or place of business or work.
- 200. — Duration, time, and regularity of employment or service.
- 201. Simultaneous and successive employers of same employee.
- 202. General and special employers; employers of lent employees.
- 203. — In general.
- 204. — Liability of general employer.
- 205. — Liability of special employer.
- 206. — Liability of both general and special employers.
- 207. — Requisites for special employment.
- 208. — Power of direction and control.
- 209. — Payment of wages.
- 210. — Person hiring team or motor vehicle and driver.
- 211. Employers accepting act though not subject thereto.
- 212. Partnership.
- 213. Joint venturers.
- 214. Labor unions and associations of workers.
- 215. Corporations.
- 215.5. Sole proprietors; self-employed persons.
- 216. Legal representatives.
- 217. Receivers, assignees, and conservators.
- 218. Governmental body.
- 219. — In general.
- 220. — Federal government and agencies.
- 221. — State government and agencies.

IV. EMPLOYERS WITHIN ACTS. (Cont'd)

- 222. — Municipal corporations in general.
- 223. — Cities, towns, and villages.
- 224. — Counties.
- 225. — School districts.
- 226. — Townships.
- 227. — Other divisions or districts.
- 228. — Liability as between two bodies involved.
- 229. Non-profit or charitable institutions.

V. EMPLOYEES WITHIN ACTS.

(A) IN GENERAL.

- 230. In general.
- 231. Meaning of "employee" and similar terms in general.
- 232. Distinguished from other relations.
- 233. Necessity of relation of master and servant or employer and employee.
- 234. Creation and existence of relation in general.
- 235. Right to hire, discharge, or control.
- 236. Payment of wages.
- 237. — In general.
- 238. — Necessity of payment or liability.
- 239. — By whom paid.
- 240. — Payment of commissions, or by piece or quantity.
- 241. — Payment in property or services.
- 242. Contractual relation.
- 243. — In general.
- 244. — Necessity of contract.
- 245. — Express or implied contract.
- 246. — Making and requisites of contract.
- 247. — Legality and validity of contract.
- 248. Commencement, duration, and termination of relation.
- 249. Duration and continuity of employment.
- 250. Effect of insurance of liability.
- 251. Earnings.

(B) PARTICULAR CLASSES OF PERSONS IN GENERAL.

- 252. In general.
- 253. Persons prohibited by law from being employed.
- 254. Substitutes.
- 255. Volunteers.
- 256. Nonresidents and aliens.

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V. EMPLOYEES WITHIN ACTS.(Cont'd)

- 257. Members of employer's family.
- 258. Receivers.
- 259. Member of profession.
- 260. Seamen, fishermen, stevedores, and other maritime employees.
- 261. Soldiers; militiamen.
- 262. Federal acts.

(C) CASUAL EMPLOYEES AND EMPLOYMENT IN TRADE OR BUSINESS OF EMPLOYER.

1. CASUAL EMPLOYEES IN GENERAL.

- 263. Meaning of term "casual" in general.
- 264. Exclusion or inclusion of casual employees in general.
- 265. Determination and tests of nature of employment in general.
- 266. Recurring employment.
- 267. Particular employees.
- 268. — In general.
- 269. — Persons doing mechanical or repair work in general.
- 270. — Persons constructing, improving, and repairing buildings or structures.
- 271. — Persons removing or destroying building or structure.
- 272. — Painters and decorators.
- 273. — Persons employed in mining, excavating, and similar work.
- 274. — Persons engaged in hauling, loading, and unloading.
- 275. — Household workers, waiters, and similar workers.
- 276. — Professional workers.
- 277. — Public employees.

2. EMPLOYMENT IN TRADE OR BUSINESS OF EMPLOYER.

- 278. In general.
- 279. Necessity that employment be in usual course of business to be included.
- 280. Necessity that employment be both casual and not in usual course of business to be excluded.
- 281. Test and determination of employment in usual course of business in general.
- 282. Particular employments in trade or business of employer.
- 283. — In general.
- 284. — Public work or employment.

V. EMPLOYEES WITHIN ACTS.(Cont'd)

- 285. — Work of superintendents, foremen, managers, and similar work.
- 286. — Mechanical and repair work in general.
- 287. — Construction of buildings or structures.
- 288. — Reconstruction, remodeling, improvement, or repair of buildings or structures.
- 289. — Demolition or removal of buildings or structures.
- 290. — Painting and decorating.
- 291. — Construction and installation of machinery and equipment.
- 292. — Mining, quarrying, excavating, and similar work.
- 293. — Hauling, carriage, loading, and unloading.
- 294. — Cutting or trimming trees.

(D) PARTNERS AND JOINT VENTURERS.

- 295. In general.

(E) CORPORATE OFFICERS AND STOCKHOLDERS.

- 297. In general.
- 298. Capacity to act as employee in general.
- 299. Particular officers and stockholders in general.
- 300. Principal stockholders and amount of salary.
- 301. Performance of executive duties.
- 302. Performance of labor or services.
- 303. Effect of insurance.

(F) INDEPENDENT CONTRACTORS.

- 304. In general.
- 305. Determination and tests of status in general.
- 306. Direction, control, or supervision in general.
- 307. Right of control as distinguished from exercise of control.
- 308. Limitation on right of control; exercise of limited control.
- 309. Right or power to terminate relation.
- 310. Nature of service or business.
- 311. Hiring, furnishing, controlling, discharging, and paying assistants, and assistance by employer.

413. WORKERS' COMPENSATION

V. EMPLOYEES WITHIN ACTS.(Cont'd)

- 312. Furnishing equipment, material, or supplies.
- 313. Payment for services.
- 314. Dual capacity as employee and independent contractor.
- 315. Persons in particular employments.
- 316. — In general.
- 317. — Public employees in general.
- 318. — Unskilled laborers in general.
- 319. — Superintendents, foremen, and managers.
- 320. — Mechanics and repairmen.
- 321. — Persons constructing or wrecking buildings.
- 322. — Repairers of buildings.
- 323. — Painters and decorators.
- 324. — Persons constructing and installing instrumentalities and equipment.
- 325. — Watchmen, janitors, and caretakers.
- 326. — Furnishers of materials and supplies.
- 327. — Persons working in mines, quarries, or excavations, and similar work.
- 328. — Persons cutting and sawing logs and lumber.
- 329. — Persons loading and unloading vehicles.
- 330. — Persons clearing, grading, and constructing streets and rights of way.
- 331. — Haulers, carriers, and deliverymen in general.
- 332. — Transporters of persons.
- 333. — Haulers of logs and lumber.
- 334. — Haulers of gravel, and building and road material.
- 335. — Haulers of foodstuff and agricultural products.
- 336. — Haulers of refuse and garbage.
- 337. — Aviators.
- 338. — Professional persons.
- 339. — Entertainers.
- 340. — Newsboys and newsdealers.
- 341. — Filling station operators and employees.
- 342. — Salesmen, agents, and solicitors.
- 343. — Stevedores, seamen, and dredge operators.

(G) EMPLOYEES OF CONTRACTOR OR SUBCONTRACTOR.

- 344. In general.
- 345. Relationship between immediate employer and person sought to be held.
- 346. Relation between general contractor and subcontractor.
- 347. Who are independent contractors in general.
- 348. Who are subcontractors.
- 349. Contractor's employee or subcontractor as independent contractor.
- 350. Persons employed by contractor as employees of principal or of contractor.
- 351. Liability of general contractor to employees of subcontractor.
- 352. Liability as owner or proprietor.
- 353. Work of original employer.
- 354. — In general.
- 355. — Acts constituting part of employer's business.
- 356. Insurance by contractor or subcontractor or device to escape liability by principal.
- 357. — In general.
- 358. — Effect of insurance.
- 359. — Failure to insure or to require insurance.
- 360. Degree of liability; primary and secondary liability.
- 361. Employees of lessees or licensees.

(H) CHILDREN OR MINORS.

- 362. Applicability of Workers' Compensation Acts to minors in general.
- 363. Minors legally employed in general.
- 364. — In general.
- 365. — Age of minor.
- 366. Minors illegally employed in general.
- 367. — In general.
- 368. — Age of minor.
- 369. — Test and determination of illegality of employment in general.
- 370. — Minors employed in violation of ordinances.
- 371. Employment certificates, permits, and proof of age.
- 372. Emancipation of minor.
- 373. Independent contractors.

413. WORKERS' COMPENSATION

(I) PUBLIC OFFICERS AND EMPLOYEES.

- 374. In general.
- 375. Officers in general.
- 376. Employees in general.
- 377. State officers and employees in general.
- 378. County officers and employees in general.
- 379. Township officers and employees in general.
- 380. Municipal officers and employees in general.
- 381. Road and bridge officers and employees.
- 382. School officers and employees.
- 383. Sheriffs and constables and their assistants.
- 384. Police department officers and employees; marshals.
- 385. Fire department officers and employees.
- 386. Relief workers.
- 387. Convicts or prisoners.
- 388. Taxpayer working out road tax.
- 389. Employee of independent contractor or subcontractor.
- 390. Effect of other provisions for relief.

VI. ACCEPTANCE OR ELECTION TO COME UNDER ACT.

- 391. Compulsory or elective acts in general.
- 392. Acceptance or rejection of acts in general.
- 393. Election by employer.
- 393.1. — In general.
- 394. — Necessity.
- 395. — Sufficiency in general.
- 396. — Notice to employee in general.
- 397. — Posting notices.
- 398. — Election as to one or more distinct kinds of business.
- 399. Election by employee.
- 400. — In general.
- 401. — Necessity of election and right to elect in general.
- 402. — Successive or intermittent employments.
- 403. — Acts constituting election.
- 404. — Minors.
- 405. Time of election.
- 406. Effect of election.
- 407. Withdrawal or termination of election.

VII. COMPENSATION ON DEATH OF EMPLOYEE.

(A) PERSONS ENTITLED TO BENEFITS.

1. IN GENERAL.

- 410.1. In general.
- 410.2. Alienage or nonresidence of claimant.
- 410.3. Dependency of claimant as condition of claimant's right.
- 410.4. Partial dependency as sufficient basis of claimant's right.
- 410.5. Total and partial dependency defined and distinguished.
- 410.6. Who are dependents in general.
- 410.7. Actual dependents in general.
- 410.8. Legal liability of deceased to support or voluntary contributions of deceased.
- 410.9. Amount, form, or regularity of deceased's contributions as affecting claim of dependency.
- 410.10. Claimant's earning ability or other resources.
- 410.11. Measure or extent of support needed.
 - (1). In general.
 - (2). Station in life as measuring extent of needed support.
- 410.12. Necessity that dependency be upon deceased's earnings, not other resources.
- 410.13. Necessity or character of family expenses to which deceased contributed.
- 410.14. Actual use of contributions for necessary support.
- 410.15. Conclusive presumption of dependency.
- 410.16. Time of determination of dependency or relation.

2. PERSONS IN PARTICULAR RELATIONSHIPS TO EMPLOYEE.

- 420.1. In general.
- 420.2. Membership in family or household.
- 420.3. Surviving spouses.
- 420.4. — In general.
- 420.5. — Status as respects marriage, common-law marriage, or illegal marriage.
- 420.6. — Time of marriage.

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VII. COMPENSATION ON DEATH OF EMPLOYEE.(Cont'd)

- 420.7. — Deceased's illegal marriage to another as affecting lawful spouse.
- 420.8. — Living together or separated.
- 420.9. — Living apart for justifiable cause or without fault.
- 420.10. — Abandonment, desertion, or voluntary living apart by surviving spouse.
- 420.11. — Divorce proceedings.
- 420.12. — Insanity of surviving spouse.
- 420.13. — Legal obligation or legal liability to support.
- 420.14. — Acquiescence by surviving spouse in deceased's failure to support.
- 420.15. — Conclusive presumption of dependency.
- 420.16. — Amount, form, and regularity of deceased's contributions as affecting claim of dependency.
- 420.17. — Spouse's earning ability or other resources as affecting dependency.
- 420.18. — Necessity or character of family expenses to which deceased contributed as affecting claim of dependency.
- 420.19. — Time of determination of dependency.
- 420.20. Children.
- 420.21. — In general.
- 420.22. — Adopted children.
- 420.23. — Stepchildren.
- 420.24. — Illegitimate children in general.
- 420.25. — Illegitimate children as members of family of or supported by deceased.
- 420.26. — Posthumous children.
- 420.27. — Children to whom deceased stood in loco parentis, or membership in family or support by deceased as conferring right.
- 420.28. — Orphans.
- 420.29. — Dependency of child in general.
- 420.30. — Presumed dependency in general.
- 420.31. — Age of child as affecting dependency.
- 420.32. — Amount, form, or regularity of deceased's contributions.

VII. COMPENSATION ON DEATH OF EMPLOYEE.(Cont'd)

- 420.33. — Child's earning power or other resources or support by others as affecting dependency.
- 420.34. — Existence of surviving dependent spouse as affecting dependency.
- 420.35. — Divorce of parents as affecting dependency.
- 420.36. — Living separate or apart from deceased as affecting dependency or barring right to compensation.
- 420.37. — Time of determination of dependency.
- 420.38. Parents.
- 420.39. — In general.
- 420.40. — Who are parents.
- 420.41. — Dependency of parents in general.
- 420.42. — Presumed dependency and necessity of actual dependency.
- 420.43. — Total or partial dependency.
- 420.44. — Amount, form, or regularity of deceased's contributions.
- 420.45. — Parent's earning ability or other resources as affecting dependency.
- 420.46. — Necessity of or character of family expenses to which deceased contributed.
- 420.47. — Time of determination of dependency.
- 420.48. Brothers and sisters.
- 420.49. — In general.
- 420.50. — Dependency.
- 420.51. Grandchildren and grandparents.
- 420.52. Nieces, nephews, aunts, and uncles.

3. CONFLICTING CLAIMS, PRIORITIES, AND APPORTIONMENT.

- 430.1. In general.
- 430.2. Classes and priority.
- 430.3. — In general.
- 430.4. — Partial and total dependency in general.
- 430.5. — Priority of particular enumerated relationships.
- 430.6. Apportionment.

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4. EFFECT OF DEATH, MARRIAGE, COMING OF AGE, CESSATION OF DEPENDENCY, OR OTHER CHANGE OF CONDITION OF PERSON ENTITLED.

- 440.1. In general.
- 440.2. On rights of particular persons entitled.
- 440.3. — In general.
- 440.4. — Surviving spouses and their representatives.
- 440.5. — Children and their representatives.
- 440.6. — Parents and their representatives.
- 440.7. — Brothers and sisters and their representatives.
- 440.8. On rights of other beneficiaries.
- 440.9. — In general.
- 440.10. — Children after cessation of payments to surviving spouse or child.
- 440.11. — Parents, grandchildren, and grandparents.

(B) DEATH BENEFITS.

- 450.1. In general.
- 450.2. Nature of right to compensation and time of vesting.
- 450.3. Prior award for disability as affecting death compensation.

(C) DISABILITY COMPENSATION.

- 460.1. In general.
- 460.2. Survivorship and persons entitled to balance of disability payments.
- 460.3. Settlement or agreement, balance due under.
- 460.4. Amount of balance of disability installments.
- 460.5. Death of employee without having claimed compensation.

VIII. INJURIES FOR WHICH COMPENSATION MAY BE HAD.

(A) NATURE AND CHARACTER OF PHYSICAL HARM.

1. IN GENERAL.

- 511. In general.
- 512. Meaning of terms injury and personal injury and similar terms in general.
- 513. "Accident" and "injury" distinguished.
- 514. What are accidents in general.
- 515. What are accidental injuries in general.

VIII. INJURIES FOR WHICH COMPENSATION MAY BE HAD.(Cont'd)

- 516. Necessity that injury be accidental in general.
- 517. Necessity that injury happen suddenly and be traceable to definite time, place, and occasion; "event."
- 518. Physical nature of injury; violence, marks, and objective symptoms.
- 519. Intention, design, fault, or negligence, as affecting accidental nature of injury.
- 520. Willful or intentional acts of employer, fellow servant, or third person.

2. DISEASES, INFECTIONS, AND POISONING.

- 521. In general.
- 522. Necessity of traumatic or accidental origin in general.
- 523. Disease constituting personal injury or injury by accident in general.
- 524. Disease resulting from injury, accident, or fortuitous event in general.
- 525. Diseases resulting from contact with poisonous substances in general.
- 526. Diseases resulting from bruises and abrasions.
- 527. Inhalation of gas, fumes, or dust.
- 528. Exposure.
- 529. Weakened resistance.
- 530. Infections in general.
- 531. Particular diseases.
- 532. — In general.
- 533. — Anthrax.
- 534. — Apoplexy.
- 535. — Heart diseases.
- 535.5. — Immune system disorders.
- 536. — Influenza.
- 537. — Kidney diseases.
- 538. — Lung diseases in general.
- 539. — Pneumonia.
- 540. — Tetanus.
- 541. — Tuberculosis.
- 542. — Typhoid fever.
- 543. — Meningitis.
- 544. — Paralysis.
- 545. — Ulcers, abscesses, and felons.
- 546. — Mental and emotional disability.
 - (1). In general.
 - (2). Physical injury requirement.
 - (3). Particular conditions or diseases.

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VIII. INJURIES FOR WHICH COMPENSATION MAY BE HAD.(Cont'd)

- (4). — In general.
- (5). — Depression.
- (6). — Post-traumatic stress disorder.

3. OCCUPATIONAL DISEASES.

- 547. In general.
- 548. What are occupational diseases in general.
- 549. Particular diseases.
 - 549.1. — In general.
 - 549.2. — Lung diseases.
 - 549.3. — Heart and cardiovascular diseases.
 - 549.4. — Repetitive injury; cumulative trauma.
 - 549.5. — Mental and emotional disability.
- 550. Disease as accidental injury and distinction between disease and injury.
- 551. Time of accrual of liability.

4. AGGRAVATION OF PREVIOUSLY IMPAIRED CONDITION.

- 552. In general.
- 552.5. Aggravation of preexisting disease, generally.
- 553. Necessity of accident and causal connection.
- 554. Effect of predisposing physical condition.
- 555.1. Aggravation of particular condition or disease.
 - 555.2. — In general.
 - 555.3. — Back.
 - 555.4. — Head, neck, and shoulders.
 - 555.5. — Extremities.
 - 555.6. — Hemorrhages, strokes, and aneurysms.
 - 555.7. — Heart and cardiovascular conditions.
 - 555.8. — Lung diseases.
 - 555.9. — Arthritis.
 - 555.10. — Mental and emotional disability.
- 563.1. Aggravation of prior, work-related injury or disease.
- 563.2. — In general.
- 563.3. — Back injuries.

VIII. INJURIES FOR WHICH COMPENSATION MAY BE HAD.(Cont'd)

- 563.4. — Head, neck, and shoulder injuries.
- 563.5. — Injuries to extremities.
- 563.6. — Repetitive injury; cumulative trauma.
 - (1). In general.
 - (2). Carpal tunnel syndrome.
- 563.7. — Heart and cardiovascular conditions.
- 563.8. — Lung diseases.
- 563.9. — Arthritis.
- 563.10. — Mental and emotional disability.

5. PARTICULAR INJURIES AND CONSEQUENCES.

- 567. In general.
- 568.1. Trauma, muscular strains, and consequences of exertion and overexertion.
- 568.2. — In general.
- 568.3. — Back injuries.
- 568.4. — Head, neck, and shoulder injuries.
- 568.5. — Injuries to extremities.
- 568.6. — Repetitive injury; cumulative trauma.
 - (1). In general.
 - (2). Carpal tunnel syndrome.
- 570. Injuries to blood vessels; strokes and aneurysms.
- 571. Injuries to heart.
- 572. Hernia.
- 573. — In general.
- 574. — Immediate appearance of hernia.
- 575. — Immediate cessation of work.
- 576. — Pre-existing hernia or weakened structural condition.
- 577. Injuries to sexual organs.
- 578. Sunstroke and heat prostration.
- 579. — In general.
- 580. — As injury or personal injury in general.
- 581. — As accident or accidental injury.
- 582. Burns.
- 583. Consequences of exposure to cold, or to cold and wetting.
- 584. — In general.
- 585. — Freezing and frostbite.
- 586. Jolts, jerks, and jars.

413. WORKERS' COMPENSATION

VIII. INJURIES FOR WHICH COMPENSATION MAY BE HAD.(Cont'd)

- 587. Falls.
- 588. Bruises and irritations.
- 589. Injury to ears and impairment of hearing.
- 590. Injury to eyes and impairment of vision.
- 591. Injuries from lightning.
- 592. Bad posture.
- 593. Injuries by insects or animals.
- 594. Disfigurement.
- 595. Pain.
- 596. Mental and emotional disability.

(B) REMOTE AND PROXIMATE CONSEQUENCES.

- 597. In general.
- 598. Two or more causes.
- 599. Death.
- 600. — In general.
- 601. — Death from causes not related to accident.
- 602. — Time of death.
- 603. Suicide.

(C) INJURIES ARISING OUT OF AND IN COURSE OF EMPLOYMENT IN GENERAL.

- 604. In general.
- 605. Construction and application of statutory provisions in general.
- 606. What are injuries arising out of and in course of employment in general.
- 607. Arising out of employment in general.
- 608. — In general.
- 609. — Necessity of causal connection between employment and injury in general.
- 610. — What injuries arise out of employment in general.
- 611. — What risks are incidental to employment in general.
- 612. — Risks common to public at large.
- 613. — Necessity that injury be foreseen or foreseeable.
- 614. In course of employment in general.
- 615. — In general.
- 616. — Necessity that injuries occur in course of employment.
- 617. — What are injuries in course of employment in general.

VIII. INJURIES FOR WHICH COMPENSATION MAY BE HAD.(Cont'd)

- 618. Previously weakened or diseased condition.

(D) PARTICULAR CAUSES, CIRCUMSTANCES, AND CONDITIONS OF INJURY.

1. IN GENERAL.

- 619. Particular acts in or incidental to employment in general.
- 619.5. Injuries occurring while pursuing treatment.
- 620. Injuries by objects falling or thrown in general.
- 621. Drowning.
- 622. Poison, infection, contagion, exposure, or disease.
- 623. Injuries by insects or animals.
- 624. Extinguishment of fires.
- 625. Entertainments on behalf of employer.

2. ACTS DONE UNDER DIRECTION OR PERMISSION, OR IN EMERGENCY.

- 626. Acts done under direction or permission of employer in general.
- 627. Acts in emergencies.

3. NEGLIGENCE, UNREASONABLE, OR VOLUNTARY ACTS, AND INCURRENCE OF RISK.

- 628. Negligent or unreasonable acts in general.
- 629. Voluntary act or incurrence of risk outside of employment.
- 630. — In general.
- 631. — Particular acts.

4. INJURIES BY ELECTRICITY, EXPLOSIONS, OR BURNS.

- 632. Injuries from explosions.
- 633. Injuries by electricity.
- 634. Burns.

5. INJURIES FROM OPERATION, CARE, OR REPAIR OF VEHICLES, ELEVATORS OR HOISTING APPARATUS.

- 635. Injuries in operation, repair, or care of vehicles in general.
- 636. Injuries from operation or use of elevators or hoisting apparatus.

6. INJURIES BY ELEMENTS OR ACT OF GOD.

- 637. In general.

413. WORKERS' COMPENSATION

VIII. INJURIES FOR WHICH COMPENSATION MAY BE HAD.(Cont'd)

- 638. Storms and floods.
- 639. Lightning.
- 640. Earthquakes.
- 641. Frostbite or freezing.
- 642. Sunstroke or heat prostration.

7. STREET ACCIDENTS IN GENERAL.

- 643. In general.
- 644. Necessity of using highway or street in general.
- 645. Risks common to public.
- 646. Highway employees.
- 647. Injuries by vehicles in general.
- 648. Injuries by vehicles to persons on foot.

8. SLIPPING, TRIPPING, OR FALLS.

- 649. In general.
- 649.1. Accidental character.
- 649.2. Cause.
- 649.3. Relation to employment in general.
- 649.4. As cause of injury or disability in general.

9. ACTS FOR PERSONAL COMFORT OR CONVENIENCE OF EMPLOYEE.

- 652. In general.
- 653. Preparing to begin or quit work and washing up.
- 654. Satisfying thirst or hunger.
- 655. Seeking warmth or shelter.
- 656. Seeking fresh air.
- 657. Heeding call of nature.
- 658. Making or answering telephone calls.
- 659. Resting or sleeping.
- 660. Use of tobacco.

10. ACTS FOR BENEFIT OF EMPLOYER AND EMPLOYEE.

- 661. In general.
- 662. Repair or care of property of employee used in employment.
- 663. Catching rides or taking short cuts.
- 664. Recreation of employees.

11. ACTS FOR INDIVIDUAL PURPOSES OR BENEFIT OF EMPLOYEE.

- 665. In general.
- 666. Deviation from employer's business in general.

VIII. INJURIES FOR WHICH COMPENSATION MAY BE HAD.(Cont'd)

- 667. Injuries while returning or after return to employer's business.
- 668. Visiting with co-employees or other persons.

12. ACTS FOR BENEFIT OF CO-EMPLOYEE OR THIRD PERSON.

- 669. Acts for benefit of co-employee.
- 670. Acts for benefit of third persons.

13. HORSEPLAY AND PRACTICAL JOKING.

- 671. In general.
- 672. Acts of fellow employees in general.
- 673. Customary acts, knowledge of employer, and duty to prevent.
- 674. Use of compressed air, electricity, explosives, or fire.
- 675. Articles thrown by other employees.
- 676. Participation by employee injured.
- 677. Acts of third persons.

14. INJURIES BY ACTS OF CO-EMPLOYEE OR OF THIRD PERSON.

- 678. In general.
- 678.1. Assaults in general.
- 680.1. Acts of co-worker.
- 680.2. — In general.
- 680.3. — Reasons for act in general.
- 680.4. — Relation to employment.
- 680.5. — Assaults.
 - (1). In general.
 - (2). Reasons for assault in general.
 - (3). Relation to employment.
- 689.1. Acts of third persons.
- 689.2. — In general.
- 689.3. — Reasons for act in general.
- 689.4. — Relation to employment.
- 689.5. — Assaults.
 - (1). In general.
 - (2). Reasons for assault in general.
 - (3). Relation to employment.

15. ACCIDENTAL SHOOTING.

- 698. In general.
- 699. By employer.
- 700. By weapons in possession of injured employee.
- 701. By co-employee.

413. WORKERS' COMPENSATION

VIII. INJURIES FOR WHICH COMPENSATION MAY BE HAD.(Cont'd)

- 702. By third persons in general.
- 703. By public officers.

16. INJURIES BEFORE OR AFTER WORKING HOURS OR BEFORE ENTERING ON OR AFTER LEAVING EMPLOYMENT.

- 704. Injuries before entering on, or after leaving, employment.
- 705. Injuries before or after working hours.
- 706. — In general.
- 707. — Before working hours in general.
- 708. — After working hours in general.
- 709. — Quarters or meals furnished by employer.

17. PLACE OF INJURY WITH REFERENCE TO PLANT OR PREMISES OF EMPLOYER.

- 710. In general.
- 711. Necessity that injuries occur in, at, or about plant, premises, or place of work of employer.
- 712. What injuries occur on, in, at, or about premises, plant, or place of work of employer.
- 713. Furtherance of employer's business.
- 714. Outside workers in general.
- 715. Traveling employees.
- 716. Going from one place of work to another.
- 717. Returning to employer's premises from outside work.
- 718. On errand by specific request or direction of employer or to transact specific business.

18. INJURIES WHILE GOING TO OR FROM WORK.

- 719. In general.
- 720. Seamen.
- 721. Contract of employment covering time of going or coming.
- 722. Injuries before leaving, or after arriving at, employee's home.
- 723. Furtherance of employer's business.
- 724. Injuries on highways.
- 725. — In general.
- 726. — Injuries by vehicles.
- 727. — Injuries at railroad crossings.
- 728. Injury with reference to plant or premises of employer.

VIII. INJURIES FOR WHICH COMPENSATION MAY BE HAD.(Cont'd)

- 729. — In general.
 - 730. — Injuries on employer's premises in general.
 - 731. — Necessity that injuries occur on premises of employer.
 - 732. — What constitutes premises.
 - 733. Transportation by employer.
 - 734. — In general.
 - 735. — Contracts for transportation in general.
 - 736. — Direction of employer.
 - 737. — Vehicles furnished for purpose of transportation of employees.
 - 738. — By boat or ferry.
 - 739. — By horse or horse-drawn vehicle.
 - 740. — By street cars.
 - 741. — By railroad.
 - 742. — By motor vehicle in general.
 - 743. — Permissive use of motor vehicles.
 - 744. — Deviation from route.
 - 745. — Boarding or alighting from motor vehicle.
 - 746. Transportation by employee.
 - 747. Transportation by co-employee or third person.
 - 748. Entering or leaving premises in general.
 - 749. Use of ways leading to or away from employer's premises.
 - 750. — In general.
 - 751. — Customary use of way or method of ingress or egress.
 - 752. — Ways furnished, maintained, or under control of employer.
 - 753. — Choice of way.
 - 754. — Crossing or using railroad tracks or bridges.
 - 755. Use of particular entrances, exits, or instrumentalities.
 - 756. — In general.
 - 757. — Elevators and stairways.
- ##### 19. INJURIES WHILE GOING TO OR FROM MEALS; GOING FOR PAY; GOING TO PUNCH TIME CLOCK; AND SIMILAR ACTS.
- 758. Going to or from meals.
 - 759. — In general.
 - 760. — Injuries on roads, streets or bridges in general.
 - 761. — Injury by vehicles.

413. WORKERS' COMPENSATION

VIII. INJURIES FOR WHICH COMPENSATION MAY BE HAD.(Cont'd)

- 762. Going for pay, and other acts relating to wages.
- 763. Going to punch time clock or checking out.

20. INTERVALS OR TEMPORARY CESSATION OF WORK; EMPLOYEE AWAY FROM WORKING PLACE.

- 764. Intervals or temporary cessation of work.
- 765. — In general.
- 766. — Necessity that employee be actually at work.
- 767. — Rest periods.
- 768. — Noon hours and meal periods.
- 769. — Employees subject to call.
- 770. Employee away from working place.

(E) DEFENSES AGAINST CLAIMS FOR COMPENSATION; MISCONDUCT OF EMPLOYEE.

- 771. In general.
- 772. Abrogation of common-law defenses in general.
- 773. Misrepresentations in obtaining employment.
- 774. Serious and willful misconduct in general.
- 775. — In general.
- 776. — Meaning of terms in general.
- 777. — Particular acts constituting misconduct.
- 778. Willful or culpable negligence, serious neglect, or recklessness.
- 779. Violation of statutory or other regulations in general.
- 780. — In general.
- 781. — Failure to obtain license.
- 782. — Excessive speed.
- 783. — Unlighted vehicle.
- 784. — Violation of traffic regulations.
- 785. — Violation of mining regulations.
- 786. Violation of rules, orders, or warnings.
- 787. — In general.
- 788. — Making and enforcement of rules and orders in general.
- 789. — Employee's knowledge and understanding of rules and orders.
- 790. — Failure to enforce rules or orders.
- 791. — Acts prohibited in general.

VIII. INJURIES FOR WHICH COMPENSATION MAY BE HAD.(Cont'd)

- 792. — Place of work.
- 793. — Manner of doing work.
- 794. — Doing prohibited work.
- 795. — Use of vehicles, and modes of transportation.
- 796. — Operation and use of elevators.
- 797. Failure to use safety devices.
- 798. Intoxication.
- 799. Injury intentional on part of employee.
- 800. Injury caused by employee's assault or willful intention to injure another.

IX. AMOUNT AND PERIOD OF COMPENSATION.

(A) BASIS FOR DETERMINATION OF AMOUNT.

- 801. In general.
- 810. Earnings or wages in general.
- 811. Average earnings.
- 812. Daily wages.
- 813. Weekly wages; number of days included.
- 814. Choice between methods of computation.
- 815. Computation of earnings or wages.
- 816. — In general.
- 817. — Length of time in employment prior to injury.
- 818. — Wages of employee of same class.
- 819. — Employment and rate of wages when injured.
- 820. — Just and fair mode of computation.
- 821. — Part time; continuous employment; staggered employment.
- 822. — Seasonal, periodic, or intermittent employment.
- 823. — Interruption of employment or loss of time.
- 824. — Overtime.
- 825. — Full time.
- 826. — Second or subsequent injury.
- 827. — Board, lodging, and clothes.
- 828. — Earnings from several employers.
- 829. — Employees serving in different capacities.
- 830. — Volunteer fire or law enforcement personnel.
- 831. — Gratuities, tips, and bonuses; fringe benefits.

413. WORKERS' COMPENSATION

IX. AMOUNT AND PERIOD OF COMPENSATION.(Cont'd)

- 832. — Sums paid by employer for hire of truck or other instrumentality.
- 833. — Profits from business.
- 834. — Assistants and supplies.
- 835. — Possible increase of wages.
- 835.5. — Cost of living adjustment.

(B) DISABILITY BENEFITS.

1. IN GENERAL.

- 836. In general.
- 836.5. Factors considered.
- 837. Time between injury and beginning of compensation.
- 838. Commencement of disability or compensation; date of disability.
- 839. Duration and termination of period.
- 839.1. Amount of benefits in general.
- 839.2. Family status affecting amount.

2. TEMPORARY OR PERMANENT DISABILITY IN GENERAL.

- 840.1. In general.
- 840.2. Temporary disability.
- 840.3. — In general.
- 840.4. — Amount and period.
- 840.5. — Particular cases.
- 840.6. Permanent disability.
- 840.7. — In general.
- 840.8. — Amount and period.
- 840.9. — Particular cases.

3. TOTAL OR PARTIAL DISABILITY IN GENERAL.

- 850.1. In general.
- 850.2. Partial disability.
- 850.3. — In general.
- 850.4. — Amount and period.
- 850.5. — Particular cases.
- 850.6. — Percentage awards.
- 850.7. Total disability.
- 850.8. — In general.
- 850.9. — Amount and period.
- 850.10. — Particular cases.

4. SUPPLEMENTAL AND IMPAIRED EARNING BENEFITS.

- 860.1. In general.
- 860.2. Particular cases.

5. PREVIOUS IMPAIRMENT OR MULTIPLE INJURIES; APPORTIONMENT.

- 865.1. In general.
- 865.2. Particular cases in general.
- 865.3. Successive employers or insurers.
- 865.4. Multiple compensable injuries or impairments.

6. MAXIMUM MEDICAL IMPROVEMENT; MULTIPLE AWARDS.

- 870.1. In general.
- 870.2. Multiple awards for single injury generally.
- 870.3. Healing period.
- 870.4. Effect of maximum medical improvement on benefits.
- 870.5. Particular cases.

7. LIMITATIONS ON AMOUNT; EXTENDED BENEFITS.

- 875.1. In general.
- 875.2. Nominal benefits.
- 875.3. Minimum time of disability.
- 875.4. Minimum and maximum compensation; benefit cap.
- 875.5. Multiple injuries or impairments.
- 875.6. Extended benefits.

8. EMPLOYMENT AND EARNING CAPACITY.

- 880.1. In general.
- 880.2. Impairment of earning capacity.
- 880.3. — In general.
- 880.4. — Factors considered in general.
- 880.5. — Impairment as a requirement for recovery.
- 880.6. — Employment at comparable wage as when injured.
- 880.7. — Particular cases.
- 880.8. Acceptance of employment or amount of wages as affecting eligibility.
- 880.9. Incapacity for work or employment.
- 880.10. — In general.
- 880.11. — Factors considered in general.
- 880.12. — Particular cases in general.
- 880.13. — Odd lot.
- 880.14. — Inability to work without pain.
- 880.15. Reasonable or gainful employment.
- 880.16. Light or occasional employment; accommodated work.
- 880.17. Employment in same work as when injured.

413. WORKERS' COMPENSATION

**IX. AMOUNT AND PERIOD OF
COMPENSATION.(Cont'd)**

- 880.18. Claimant's training and qualifications.
- 880.19. Release to return to work.
- 880.20. Efforts to obtain employment; work search.
 - (1). In general.
 - (2). Acceptance or rejection of job offer generally.
 - (3). Voluntary limitation of income; part-time work.
 - (4). Suitable or available employment.
 - (5). Reinstatement; employer's job offer.
- 880.21. Economic conditions affecting employment; strike or layoff.
- 880.22. Departure from position; withdrawal from workforce.
- 880.23. — In general.
- 880.24. — Voluntary departure; retirement.
- 880.25. — Discharge for cause.
- 880.26. — Incarceration.

**(C) SCHEDULED AND OTHER
PARTICULAR INJURIES.**

- 885.1. In general.
- 885.2. Medical impairment; impairment ratings.
- 885.3. Diseases.
- 885.4. Effect of previous impairment on scheduled injury; apportionment.
- 885.5. Multiple scheduled injuries.
- 885.6. Scheduled award and nonscheduled award.
- 885.7. Injury to the body as a whole.
- 885.8. Muscular strains and consequences of exertion generally.
- 885.9. Heart, cardiovascular, and lung conditions.
- 885.10. Head, neck, or shoulder injuries.
- 885.11. Back injuries.
- 885.12. Hip injuries.
- 885.13. Loss of, or injury to, member in general.
- 885.14. Loss of, or injury to, leg.
- 885.15. Loss of use of leg.
- 885.16. Loss of, or injury to, ankle, foot, or toes.
- 885.17. Loss of use of ankle, foot, or toes.

**IX. AMOUNT AND PERIOD OF
COMPENSATION.(Cont'd)**

- 885.18. Loss of, or injury to, arm.
- 885.19. Loss of use of arm.
- 885.20. Loss of, or injury to, wrist, hand, or fingers.
- 885.21. Loss of use of wrist, hand, or fingers.
- 885.22. Eye injuries and impairment of vision.
- 885.23. Ear injuries and impairment of hearing.
- 885.24. Hernia.
- 885.25. Skin conditions.
- 885.26. Mental and emotional disability.

(D) OTHER BENEFITS.

1. PAIN AND SUFFERING.

- 890.1. In general.
- 890.2. Particular cases.

2. DISFIGUREMENT.

- 895.1. In general.
- 895.2. In addition to award for loss or disability.
- 895.3. Particular cases.

**3. REHABILITATION AND RETRAINING
COMPENSATION.**

- 900.1. In general.
- 900.2. Claimant's right to rehabilitation.
- 900.3. Rehabilitation as affecting eligibility for or amount of benefits.

(E) COMPENSATION FOR DEATH.

1. IN GENERAL.

- 908. In general.
- 909. Prior physical impairment.
- 910. Amount.
- 911. — In general.
- 912. — Minimum and maximum allowances.
- 913. — Computation in general.
- 914. — Days or hours per week.
- 915. — Governmental regulation of time per week.
- 916. — Time in employment before death.
- 917. — Earnings of other employees of same class.
- 918. — Employment and rate of wages when injured.

413. WORKERS' COMPENSATION

IX. AMOUNT AND PERIOD OF COMPENSATION.(Cont'd)

- 919. — Part time; continuous employment; staggered employment.
- 920. — Seasonal or intermittent employment.
- 921. — Earnings from several employers.
- 922. — Assistants and supplies.
- 923. Amount as affected by extent of dependency in general.
- 924. Amount as affected by partial dependency in general.
- 925. Necessity that contributions be for support.
- 926. Extent of contributions.
- 927. — In general.
- 928. — Deduction of cost of maintenance and similar expenses.
- 929. — Contribution of supplies and services.
- 930. — Probable contributions.
- 931. — Contribution of earnings from other employers.

2. PERIOD OF COMPENSATION.

- 932. Commencement.
- 933. Duration and termination.

(F) DEDUCTIONS AND OFFSETS.

- 934.1. In general.
- 934.2. Payments in discharge of obligation to make compensation.
- 934.3. — In general.
- 934.4. — Particular cases.
- 934.5. Payments to employee as offsetting death benefits.
- 934.6. Wages and fringe benefits generally.
- 934.7. Payment of expenses.
- 934.8. Pensions.
- 934.9. Disability insurance benefits.
- 934.10. Social security, unemployment, and other government benefits.
- 934.11. Payments from other sources.

(G) INCREASE OR REDUCTION OF COMPENSATION.

1. MISCONDUCT IN GENERAL (PRIOR TO INJURY).

- 938. Employer's misconduct.
- 939. — In general.
- 940. — Misconduct of officer or agent.

IX. AMOUNT AND PERIOD OF COMPENSATION.(Cont'd)

- 941. — Failure to comply with safety statutes or orders.
- 942. — Employment of minor in general.
- 943. — False representations as to minor's age as excusing employment of minor.
- 944. — Failure to insure.
- 945. Employee's misconduct.

2. MINIMIZING OR AGGRAVATING INJURY (SUBSEQUENT TO INJURY).

- 946. Acts or treatment aggravating or minimizing injury in general.
- 947. Refusal or neglect to submit to medical or surgical treatment.
- 948. — In general.
- 949. — Surgical services in general.
- 950. — Expert opinions or physician's advice.
- 951. — Offer of medical or surgical treatment and demand or request by employer or employee.
- 952. — What constitutes refusal.
- 953. — Operation for hernia.
- 954. — Second or further operation or additional treatment.
- 955. — Injuries resulting in death.
- 956. Results of medical or surgical treatment or lack of treatment.
- 957. — In general.
- 958. — X-ray treatments.
- 959. — Injuries resulting in death.

(H) MEDICAL OR OTHER EXPENSES.

1. IN GENERAL.

- 961. In general.
- 962. Dependent on compensable injury or award for injury.
- 963. Effect of employer's special contract to furnish treatment.
- 964. Authority of board or commission in general.
- 965. Extent of right.
- 966. — In general.
- 967. — Surgery.
- 968. — Artificial apparatus or appliances.
- 969. — Nurse hire.
- 970. — Services as nurse by member of employee's family.

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IX. AMOUNT AND PERIOD OF COMPENSATION.(Cont'd)

- 971. — Treatment to relieve from effects of permanent injury.
- 972. — Treatment of ailment not resulting from injury in employment.
- 973. Enforcement or preservation of right to expenses.
- 974. — In general.
- 975. — Knowledge or notice of injury or need for services or request or demand and waiver thereof.
- 976. — Employer's failure to provide or waiver of right to provide as permitting employee's securing services elsewhere.
- 977. — Existence of employee's debt or employee's actual payment of debt.
- 978. — Notice of selection or employment of physician or hospital and waiver thereof.
- 979. — Physician's report as to treatment and waiver thereof.
- 980. — Physician's presentation of claim within statutory period.
- 981. — Approval by board or commission.
- 982. Period within which services may be rendered or expenses incurred.
- 983. — In general.
- 984. — Authorizing additional treatment or extension of time.
- 985. Rights of physicians and other persons rendering services.
- 986. — In general.
- 987. — Charitable organizations.
- 988. — Authority to bind employer or insurer.
- 989. Expenses of last sickness or funeral.
- 990. Amount allowable.
- 991. Persons entitled on death of employee.
- 991.5. Cost containment programs; managed care.

2. PROCEEDINGS FOR ALLOWANCE OR RECOVERY.

- 992. Nature and form of remedy, and jurisdiction and venue.
- 993. — In general.
- 994. — Services rendered at employer's or insurer's request.
- 995. Time for proceedings and limitations.

IX. AMOUNT AND PERIOD OF COMPENSATION.(Cont'd)

- 996. Persons entitled to institute proceedings and parties.
- 997. Pleading.
- 998.1. Evidence.
- 998.2. — In general.
- 998.3. — Presumptions.
- 998.4. — Burden of proof.
- 998.5. — Admissibility.
- 998.6. — Weight and sufficiency.
 - (1). In general.
 - (2). Compensability of injury.
 - (3). Extent of right; amount.
 - (4). Enforcement or preservation of right.
 - (5). Period.
 - (6). Cost containment; managed care.
- 999. Hearing, findings, and original and supplemental awards.
- 1000. Rehearing and reopening case.
- 1001. Review.
- 1002. Attorney fees and costs.

X. PAYMENT OF COMPENSATION AND COMPLIANCE WITH AWARD.

(A) MODE OF PAYMENT OR COMPLIANCE IN GENERAL.

- 1003. In general.
- 1004. Payment to representatives of persons entitled and others.

(B) PERIODICAL OR COMMUTED PAYMENTS.

1. IN GENERAL.

- 1005. Periodic or lump sum payments.

2. AGREEMENTS FOR COMMUTATION OF PAYMENTS.

- 1006. In general.
- 1007. Penalty for unauthorized or prohibited agreement.

3. AWARD BY ARBITRATOR, COMMISSIONER, BOARD, OR COURT.

- 1008. Jurisdiction and power.
- 1009. — In general.
- 1010. — Agreement or consent of parties.
- 1011. — Application or notice of hearing.
- 1012. — Approval by board.
- 1013. Grounds, propriety, and necessity.

413. WORKERS' COMPENSATION

X. PAYMENT OF COMPENSATION AND COMPLIANCE WITH AWARD.(Cont'd)

- 1014. Computation and amount.
- 1015. Proceedings in general.
- 1016. Persons entitled to institute proceedings, and parties.
- 1017. Pleadings.
- 1018. Evidence.
- 1018.1. — In general.
- 1019. — Presumptions and burden of proof.
- 1020. — Admissibility.
- 1021. — Weight and sufficiency.
- 1022. Trial.
- 1022.1. — In general.
- 1023. — Questions of law and fact.
- 1024. — Instructions.
- 1025. — Verdict and findings.
- 1026. Award or judgment.
- 1027. Setting aside award or judgment.
- 1028. Review.

(C) ENFORCEMENT OF PAYMENT OR COMPLIANCE.

- 1029. In general.
- 1030. Payment or reimbursement from special or surplus fund.
- 1030.1. — In general; second or subsequent injury or disability.
 - (1). In general.
 - (2). Prior injury or impairment.
 - (3). Nature, extent, and cause of subsequent disability.
 - (4). Proceedings.
 - (4.1). — In general.
 - (5). — Limitations.
 - (6). — Evidence.
 - (7). — Review.
- 1030.2. — Reopened cases.
- 1030.3. — Occupational disease.
- 1031. Enforcement against estate of deceased employer.
- 1032. Enforcement on insolvency of employer or insurer.
- 1033. Priorities.
- 1034. Maturing periodical payments on default.
- 1035. Action by state against noncomplying employer.

X. PAYMENT OF COMPENSATION AND COMPLIANCE WITH AWARD.(Cont'd)

- 1036. Action on award.
 - 1037. Judgment on award.
 - 1038. — In general.
 - 1039. — Opening and vacating.
 - 1040. Executions.
 - 1041. Interest.
- ##### (D) UNFAIR PRACTICES; BAD FAITH; PENALTIES.
- 1042.1. In general.
 - 1042.2. Reasonableness of employer's or insurer's conduct.
 - 1042.3. — In general.
 - 1042.4. — Controversion or dispute of claim.
 - (1). In general.
 - (2). Reasonable cause to dispute or deny.
 - (3). Notice of denial or controversion.
 - 1042.5. — Employer's duty to investigate.
 - 1042.6. — Employer's reliance on medical opinions.
 - 1042.7. — Nonpayment pending appeal or further proceedings.
 - 1042.8. — Delay.
 - 1042.9. — Termination of benefits.
 - 1042.10. — Lump sum payment; payment pursuant to settlement agreement.
 - 1042.11. Entitlement to medical benefits.
 - 1042.12. — In general.
 - 1042.13. — Amount.
 - 1042.14. Payment issues.
 - 1042.15. — In general.
 - 1042.16. — Late payment.
 - 1042.17. Penalties.
 - 1042.18. — In general.
 - 1042.19. — Amount.
 - 1042.20. Damages.
 - 1042.21. — In general.
 - 1042.22. — Compensatory.
 - 1042.23. — Punitive.
 - 1042.24. — Amount.
 - 1042.25. Proceedings to enforce payment or compliance.
 - 1042.26. — In general.
 - 1042.27. — Exhaustion of remedies.
 - 1042.28. — Hearing or trial.
 - (1). In general.

413. WORKERS' COMPENSATION

X. PAYMENT OF COMPENSATION AND COMPLIANCE WITH AWARD.(Cont'd)

- (2). Jurisdiction.
- (3). Evidence.
- (4). Questions of law and fact.
- (5). Determination; award; judgment.
- 1042.29. — Review.
- 1042.30. — Fees and costs.
 - (1). In general.
 - (2). Attorney fees.
 - (3). Costs.

(E) EFFECT OF PAYMENT.

- 1043. In general.
- 1044. Recovery back of payments.

XI. INSURANCE AND PUBLIC FUNDS.

(A) IN GENERAL.

- 1045. In general.
- 1046. Policy and purpose of statutes.
- 1047. Construction of statutes.
- 1047.5. Safety programs; inspections.
- 1047.7. Agents and brokers.

(B) PUBLIC FUNDS.

- 1048. In general.
- 1049. Administration, investment, and custody of funds.
- 1050. Premiums and rates.
- 1050.1. — In general.
- 1051. — Amount and assessment.
- 1052. — Liability and refund.
- 1053. — Payment and enforcement.
- 1053.5. — Payment by employee; withholding.
- 1054. Policy or contract.
- 1055. Change, cancellation, and forfeiture of policy.
- 1056. Payment into fund in case of absence of persons entitled to, or failure to claim, compensation.
- 1057. Payments out of fund in general.
- 1057.5. Specially dedicated funds.

(C) SELF-INSURANCE.

- 1058. In general.
- 1058.5. Reports.
- 1058.10. Pooling agreements.

XI. INSURANCE AND PUBLIC FUNDS.(Cont'd)

- 1059. Bond or security.
- 1060. Revocation of right to self-insurance.

(D) PRIVATE INSURANCE.

- 1061. In general.
- 1062. Requisites and sufficiency.
- 1063. Premiums and rates.
- 1064. Risks and coverage.
- 1065. — In general.
- 1066. — Right to refuse or limit risk.
- 1067. Estoppel of insurer.
- 1068. Change of insurers.
- 1069. Cancellation of policy.
- 1070. Reformation of policy.
- 1071. Rights as between employers, insurers, and employees.
- 1072. — In general.
- 1073. — Liability of insured employer to employee.
- 1074. Successive insurers.
- 1074.5. Reports.
- 1075. Jurisdiction and powers of compensation boards and commissions.

XII. ADMINISTRATIVE OFFICERS AND BOARDS.

- 1076. In general.
- 1077. Status and character.
- 1078. — In general.
- 1079. — Judicial or administrative.
- 1080. Continuity; change in personnel.
- 1081. Members.
- 1081.1. — In general.
- 1082. — Appointment, qualification, and tenure; disqualification.
- 1083. — Number requisite to action.
- 1084. Employees and agents.
- 1085. Jurisdiction.
- 1086. — In general.
- 1087. — Exclusiveness.
- 1088. — Presumptions.
- 1089. — Consent of parties, waiver, and estoppel.
- 1090. Powers and duties in general.
- 1091. Rules and orders.
- 1092. — In general.
- 1093. — Notice and publication.
- 1094. — Construction and operation.

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XII. ADMINISTRATIVE OFFICERS AND BOARDS.(Cont'd)

- 1095. Rulings and decisions in general.
- 1096. Records.
- 1096.5. Creation and distribution of forms.
- 1096.10. Special boards, panels or committees.

XIII. ASSIGNMENT OR TRANSFER OF RIGHTS.

- 1097. Assignment of claim.
- 1098. Assignment of award or judgment.
- 1099. Agency to receive payment.

XIV. WAIVER AND ESTOPPEL AS TO RIGHT TO CLAIM OR TO DENY LIABILITY FOR COMPENSATION.

- 1100. In general.
- 1101. Express waiver.
- 1102. Acceptance of wages.
- 1103. Pursuit of other remedies against employer.
- 1104. Election to pursue third person.
- 1105. — In general.
- 1106. — Discontinuance or dismissal.
- 1107. — Release or settlement.
- 1108. — Deductions from compensation of amount of recovery or collection from third person.
- 1109. — Liability of employer or insurer for deficiency.
- 1110. Election to pursue third person and employer.
- 1111. Election to proceed in another jurisdiction.
- 1112. Recovery of compensation from another.
- 1113. Payments from other sources.
- 1114. Estoppel of, or waiver by, employer, or insurance carrier.

XV. AGREEMENTS AS TO COMPENSATION; COMPROMISE, SETTLEMENT, AND RELEASE.

(A) REQUISITES AND VALIDITY.

- 1115. In general.
- 1116. Fraud and misrepresentation.
- 1117. Mistake.
- 1118. Consideration.
- 1119. Parties.

XV. AGREEMENTS AS TO COMPENSATION; COMPROMISE, SETTLEMENT, AND RELEASE.(Cont'd)

- 1120. Form and execution in general.
- 1121. Verification, filing, and registration.
- 1122. Approval by court, board, or commission.
- 1122.1. — In general.
- 1123. — Necessity.
- 1124. — Power and duty of court, board, or commission.
- 1125. — Proceedings for approval.
- 1126. — Sufficiency.

(B) CONSTRUCTION, OPERATION, AND ENFORCEMENT.

- 1127. In general.
- 1128. Construction.
- 1129. Operation and effect in general.
- 1130. — In general.
- 1131. — As award.
- 1132. — As admission of liability.
- 1133. — Limitation to facts agreed upon.
- 1134. Operation and effect as to particular subject-matters.
- 1135. — In general.
- 1136. — Jurisdiction of board or commission.
- 1137. — Existence and cause of injury.
- 1138. — Extent of disability and amount of compensation.
- 1139. — As to dependency and rights of dependents.
- 1140. — As to notice, claim, and limitations.
- 1141. Enforcement.

(C) REVIEW, MODIFICATION, AND CANCELLATION.

- 1142. In general.
- 1143. Conditions precedent.
- 1144. Jurisdiction of court or commission to review.
- 1145. Grounds in general.
- 1146. Fraud, accident, coercion, or mistake.
- 1147. — In general.
- 1148. — Fraud or misrepresentation.
- 1149. — Mistake.
- 1150. Inadequacy or excessiveness of compensation.
- 1151. Limitations.

413. WORKERS' COMPENSATION

XV. AGREEMENTS AS TO COMPENSATION; COMPROMISE, SETTLEMENT, AND RELEASE.(Cont'd)

- 1152. Procedure in general.
- 1153. Scope of inquiry.
- 1154. Application or petition.
- 1155. Presumptions and burden of proof.
- 1156. Admissibility of evidence.
- 1157. Weight and sufficiency of evidence.
- 1158. — In general.
- 1159. — Fraud, accident, coercion, or mistake.
- 1160. Questions of law or fact.
- 1161. Instructions to jury.
- 1162. Findings, determination, and relief.

XVI. PROCEEDINGS TO SECURE COMPENSATION.

(A) IN GENERAL.

- 1163. Institution of proceedings.
- 1164. Nature and form in general.
- 1165. Rules of procedure in general.
- 1166. Proceedings in court.
- 1167. Proceedings before boards, commissions, or arbitrators.
- 1168. Conditions precedent in general; dispute or refusal to pay.
- 1169. Abatement or revival.
- 1170. Joinder and consolidation of causes and proceedings.
- 1171. Motions.
- 1172. Stipulations.
- 1173. Continuances.
- 1174. Dismissal and nonsuit.
- 1175. Provisional allowances and advance payments.
- 1176. Jurisdiction of boards and commissions.
- 1177. — In general.
- 1178. — Exclusiveness.
- 1179. — Conditions precedent to exercise of jurisdiction.
- 1180. — Determination of jurisdictional facts.
- 1181. — Dependent on place of injury, contract, or residence.
- 1182. — By consent or conduct of parties.
- 1183. — Appearance.
- 1184. — Scope and extent.
- 1185. — Retention and continuance.

XVI. PROCEEDINGS TO SECURE COMPENSATION.(Cont'd)

- 1186. — Objections and waiver.
- 1187. Jurisdiction of courts.

(B) VENUE.

- 1188. In general:

(C) PARTIES.

- 1189. In general.
- 1190. Persons entitled or required to institute proceedings.
- 1191. — In general.
- 1192. — Minors and their representatives.
- 1193. — Executors and administrators.
- 1194. Persons against whom proceedings may or must be brought.
- 1195. Joinder.
- 1196. Intervention, and bringing in new parties.
- 1197. Substitution.
- 1198. Objections and waiver.

(D) TIME FOR INSTITUTION OF PROCEEDINGS, AND LIMITATIONS.

1. IN GENERAL.

- 1199.1. In general.
- 1199.2. Effect of failure to timely file.
- 1199.3. Applicable limitations period.
 - (1). In general.
 - (2). Death benefits.
 - (3). General statutes of limitations.
- 1199.4. Laches and prematurity of proceedings.

2. COMPUTATION, TOLLING, AND ACCRUAL.

- 1199.5. In general.
- 1199.6. Particular cases in general.
- 1199.7. Claims for death benefits in general.
- 1199.8. Date of accident.
- 1199.9. Date of injury or disability in general.
- 1199.10. Diseases; occupational diseases.
- 1199.11. Repetitive injury; cumulative trauma.
- 1199.12. Excusing delay in instituting proceedings in general.
- 1199.13. Claimant's incapacity or incompetency in general.
- 1199.14. Age.

413. WORKERS' COMPENSATION

XVI. PROCEEDINGS TO SECURE COMPENSATION.(Cont'd)

- 1199.15. Knowledge or ignorance of law or facts.
- 1199.16. Conduct of employer or insurer.
- 1199.17. — In general.
- 1199.18. — Notice or knowledge.
- 1199.19. — Fraud or representations.
- 1199.20. — Employer's report of accident.
- 1199.21. — Payment of compensation or agreement therefore.
 - (1). In general.
 - (2). What constitutes payment, and nature of payments in general.
 - (3). Payment of wages.
 - (4). Medical and hospital services.
 - (5). Agreement for compensation.
- 1199.22. Commencement and prosecution of action.
- 1199.23. — In general.
- 1199.24. — New claim after withdrawal or dismissal of previous claim or proceeding.

3. WAIVER AND ESTOPPEL.

- 1199.30. In general.
- 1199.31. Particular cases in general.
- 1199.32. Acknowledgment of liability, payment of compensation, or rendition of medical services.
- 1199.33. Failure to raise objections.

(E) NOTICE OF ACCIDENT OR INJURY.

1. IN GENERAL.

- 1216. Purpose of notice.
- 1217. Necessity.
- 1218. Persons who may give.
- 1219. Persons to whom given.
- 1220. Form and sufficiency.
- 1221. — In general.
- 1222. — Proceedings for compensation as notice.
- 1223. — Necessity of writing in general.
- 1224. — Specification of injury.
- 1225. Time for giving notice.
- 1226. — In general.
- 1227. — Hernia cases.

XVI. PROCEEDINGS TO SECURE COMPENSATION.(Cont'd)

- 1228. — Requirement that notice be forthwith, immediate, or as soon as practicable.
- 1229. — Compliance with requirements as to time in general.
- 1230. — Computation of time.
- 1231. Waiver and estoppel.

2. EXCUSING WANT OF, OR DEFECT IN, NOTICE.

- 1232. In general.
- 1233. Ignorance of statutory requirements.
- 1234. Absence of knowledge of injury or extent thereof.
- 1235. Representations, promises, and fraudulent acts of employer.
- 1236. Accident, mistake, or unforeseen cause.
- 1237. Physical or mental disability.
- 1238. Minority of employees or dependents.
- 1239. Actual notice or knowledge in general.
- 1240. What constitutes knowledge.
- 1241. Time of knowledge.
- 1242. Knowledge of agent or representative in general.
- 1243. — In general.
- 1244. — Corporate officers and agents in general.
- 1245. — Other employees.
- 1246. — Physicians and surgeons.
- 1247. Knowledge of superintendents, managers, overseers, or foremen.
- 1248. — In general.
- 1249. — Superintendents and managers.
- 1250. — Foremen.
- 1251. Want of prejudice.
- 1252. — In general.
- 1253. — Effect of actual notice.
- 1254. Acknowledgment of liability and payment of compensation or agreement therefor.
- 1255. Employer's report of accident or notice of insurance.
- 1256. Discretion of court, commission, or board in determining sufficiency of excuse.

(F) CLAIMS FOR COMPENSATION.

Time for making or filing claim for compensation, see XVI(D).

413. WORKERS' COMPENSATION

1. IN GENERAL.

- 1257. Necessity for making or filing.
- 1258. Persons entitled to make or file.
- 1259. On whom served or where filed.
- 1260. Mode of service and filing.
- 1261. Abandonment of claim.
- 1261.5. Waiver and estoppel.

2. REQUISITES AND SUFFICIENCY.

- 1262. In general.
- 1263. Notice of accident as notice of claim or as including claim.
- 1264. Necessity for writing.
- 1265. Contents.
- 1266. Different or distinct claims or claimants.
- 1267. Defects and irregularities.
- 1268. Amendments.

(G) MEDICAL EXAMINATION.

- 1305. In general.
- 1306. Right to examination in general.
- 1307. Authority of court or board.
- 1308. Time for application.
- 1309. Application and determination.
- 1310. By whom made.
- 1311. Place of examination.
- 1312. Nature and extent of examination.
- 1313. Second or further examination.
- 1314. Effect of failure to require, or to submit to, examination.
- 1315. Autopsy.

(H) ALTERNATIVE DISPUTE RESOLUTION.

- 1316.1. In general.
- 1316.2. Arbitration.
- 1316.3. Mediation.

(I) APPLICATION, PETITION, OR COMPLAINT.

- 1318. In general.
- 1319. Sufficiency in general.
- 1320. Applicability of act.
- 1321. Right to bring proceedings.
- 1322. Notice and filing of claim.
- 1323. Time and place, and nature and extent of injury.
- 1324. Joinder of causes and election.
- 1325. Amended and supplemental pleadings.
- 1326. Demurrer or exception.

(J) ANSWER OR NOTICE OF DEFENSE.

- 1327. In general.
- 1328. Time for answer.
- 1329. Matters which must be pleaded.
- 1330. — In general.
- 1331. — Absence of notice or claim, and limitations.
- 1332. Admissions.
- 1333. Amendment.

(K) ISSUES, PROOF, AND VARIANCE.

- 1334. In general.
- 1335. Matters which must be proved.
- 1336. Evidence admissible under pleadings.
- 1337. Variance.

(L) PRESUMPTIONS AND BURDEN OF PROOF.

1. IN GENERAL.

- 1338. Presumptions in general.
- 1339. Burden of proof in general.

2. PARTICULAR MATTERS.

- 1340. In general.
- 1341. Jurisdiction.
- 1342. Relationship of master and servant in general.
- 1343. Persons and employments within act.
- 1344. — In general.
- 1345. — Employments within act.
- 1346. — Employments within state or federal laws.
- 1347. — Employers within act.
- 1348. — Employees within act.
- 1349. — Independent contractors and their employees.
- 1350. Acceptance or election to come under act.
- 1351. Dependency.
- 1352. — In general.
- 1353. — Widows and widowers.
- 1354. — Children and grandchildren.
- 1355. — Parents.
- 1356. Injuries or death for which compensation may be had.
- 1357. — In general.
- 1358. — Injuries arising out of and in course of employment in general.
- 1359. — Injuries arising out of employment in general.

413. WORKERS' COMPENSATION

XVI. PROCEEDINGS TO SECURE COMPENSATION.(Cont'd)

- 1360. — Injuries arising in course of employment in general.
- 1361. — Accidental nature of injury.
- 1362. — Accident as cause of disability or death.
- 1363. — Assaults by co-employees or third persons.
- 1364. — Diseases and internal injuries in general.
- 1365. — Particular diseases.
- 1366. — Aggravation or acceleration of previously impaired condition.
- 1367. — Hernia.
- 1368. Defenses against claims for compensation.
- 1369. — In general.
- 1370. — Misconduct of employee in general.
- 1371. — Intoxication.
- 1372. — Suicide.
- 1373. Amount and period of compensation.
- 1374. — In general.
- 1375. — Extent and duration of injury or disability.
- 1376. — Grounds for increasing, diminishing, or apportioning compensation.
- 1377. — Diminution of earning capacity, and availability of suitable work.
- 1378. — Minimizing injury.
- 1379. Proceedings for compensation.
- 1380. — In general.
- 1381. — Notice of injury.
- 1382. — Claim for compensation.

(M) ADMISSIBILITY OF EVIDENCE.

- 1383. In general.
- 1384. Competency, relevancy, and materiality in general.
- 1385. Hearsay.
- 1386. Employment and parties thereto.
- 1387. Acceptance or election to come under act.
- 1388. Causes or circumstances of injury, disability or death in general.
- 1389. Reports, certificates, or memoranda of accident.
- 1390. Injury arising out of and in course of employment.

XVI. PROCEEDINGS TO SECURE COMPENSATION.(Cont'd)

- 1391. Injury as cause of disability or death.
- 1392. Testimony and statements of employee or claimant.
- 1393. Testimony and statements of employer.
- 1394. Testimony and statements of other employees.
- 1395. Medical testimony, statements, reports, and records.
- 1396. — In general.
- 1397. — Unsworn statements and reports.
- 1398. Verdict of coroner's jury.
- 1399. Conduct and habits of employee.
- 1400. Testimony taken by, and award and findings of, commission.
- 1401. Condition and repair of premises after accident.
- 1402. Nature and extent of disability.
- 1403. Fact and nature of previous injury or disability.
- 1404. Earnings, earning capacity, and amount of compensation.
- 1405. Dependency.

(N) WEIGHT AND SUFFICIENCY OF EVIDENCE.

1. IN GENERAL.

- 1406. Effect of statutory presumption.
- 1407. Credibility.
- 1408. Sufficiency in general.
- 1409. Character of proof in general.
- 1410. Testimony or statements of parties or persons injured in general.
- 1411. Hearsay evidence.
- 1412. Undisputed evidence.
- 1413. Degree of proof in general.
- 1414. Circumstantial evidence.
- 1415. Opinion evidence.
- 1416. — In general.
- 1417. — Necessity of expert evidence.
- 1418. — Credibility and conflict with other evidence.
- 1419. — Sufficiency to sustain finding in general.
- 1420. — Certainty.
- 1421. Preponderance of evidence.
- 1422. Inferences from evidence.
- 1423. Reports of employer.

413. WORKERS' COMPENSATION

XVI. PROCEEDINGS TO SECURE COMPENSATION.(Cont'd)

- 1424. Place of contract or injury and what law governs.
- 1425. Time of accident.
- 1426. Existence of insurance contract.

2. EMPLOYMENTS WITHIN ACTS.

- 1427. In general.
- 1428. Employment in interstate or intrastate commerce.

3. EMPLOYERS WITHIN ACTS.

- 1429. In general.
- 1430. Employment by agent or employee.
- 1431. Employers of particular number of employees.
- 1432. General and special employers, and change of employers.
- 1433. Simultaneous or successive employers of same employee.
- 1434. Partnership or partner.

4. EMPLOYEES WITHIN ACTS.

- 1435. In general.
- 1436. Fact, manner, and basis of payment.
- 1437. Direction and control.
- 1438. Duration and termination of relation.
- 1439. Volunteers and substitutes.
- 1440. Minors.
- 1441. Casual employees in general.
- 1442. Employment in course of trade or business of employer.
- 1443. Employer and employee or other relationship in general.
- 1444. Public employees.
- 1445. Particular employees.
- 1446. — In general.
- 1447. — Salesmen, solicitors, and agents.
- 1448. — Operators of vehicles and airplanes and their assistants.
- 1449. — Mechanical and repair workers.
- 1450. — Miners, excavators, and drillers or diggers of wells.
- 1451. Independent contractors.
- 1452. — In general.
- 1453. — Tests of relationship in general.
- 1454. — Persons engaged in logging and lumbering.

XVI. PROCEEDINGS TO SECURE COMPENSATION.(Cont'd)

- 1455. — Miners, excavators, well diggers or drillers, and similar work.
- 1456. — Painters, decorators, and similar workers.
- 1457. — Mechanics and repairmen in general.
- 1458. — Salesmen, solicitors, agents, collectors, and similar workers.
- 1459. — Persons erecting, repairing, or demolishing building or structure.
- 1460. — Persons engaged in hauling or in operation of vehicles.
- 1461. Employees of contractor or subcontractor.

5. ACCEPTANCE OR ELECTION TO COME UNDER ACTS.

- 1462. In general.
- 1463. Election by employer.
- 1464. Election by employee.

6. DEPENDENCY AND RELATIONSHIP.

- 1465. In general.
- 1466. Existence of dependents in general.
- 1467. Character and degree of proof in general.
- 1468. Relatives and members of family in general.
- 1469. — In general.
- 1470. — Surviving spouse and children.
- 1471. — Parents, brothers, and sisters.
- 1472. Husband and wife.
- 1473. — In general.
- 1474. — Existence and validity of marriage relation; common-law marriages.
- 1475. — Living together.
- 1476. — Living apart in general.
- 1477. — Nonresidents and aliens.
- 1478. Children.
- 1479. Parents and persons in loco parentis.
- 1480. — In general.
- 1481. — As affected by contributions of deceased in general.
- 1482. — Nonresidents and aliens.
- 1483. — Partial dependency.
- 1484. — Total dependency.
- 1485. Brothers and sisters.
- 1486. Grandparents and grandchildren.

413. WORKERS' COMPENSATION

7. ACCIDENT OR INJURY AND CONSEQUENCES THEREOF.

- 1487. Injuries arising out of and in course of employment in general.
- 1488. Injuries arising out of employment in general.
- 1489. Injuries in course of employment in general.
- 1490. Fact of injury, and accidental nature in general.
- 1491. Existence and extent of disability in general.
- 1492. Injury as cause of disability in general.
- 1493. Death from accidents in general.
- 1493.5. Suicide.
- 1494. Diseases, infections, and poisoning.
- 1495. — In general.
- 1496. — Poisoning in general.
- 1497. — Infections in general.
- 1498. — Cuts, bruises, and abrasions of skin in general.
- 1499. — Blood poisoning.
- 1500. — Inhalation of gas, fumes, or dust.
- 1501. Particular diseases.
- 1502. — In general.
- 1503. — Anthrax.
- 1504. — Cancer.
- 1505. — Tumors, abscesses, and cysts.
- 1506. — Ulcers and fistulas.
- 1507. — Skin diseases.
- 1508. — Erysipelas.
- 1509. — Diseases of the lungs and respiratory system in general.
- 1510. — Influenza.
- 1511. — Pleurisy.
- 1512. — Pneumonia.
- 1513. — Tuberculosis.
- 1514. — Apoplexy.
- 1515. — Epilepsy.
- 1516. — Paralysis.
- 1517. — Vertigo, dizziness, and fainting.
- 1518. — Tetanus.
- 1519. — Heart diseases.
- 1520. — Disease or obstruction of blood vessels.
- 1521. — Kidney diseases.
- 1522. — Diabetes.
- 1523. — Appendicitis.
- 1524. — Rheumatism; lumbago.
- 1525. — Arthritis.

XVI. PROCEEDINGS TO SECURE COMPENSATION.(Cont'd)

- 1526. — Fevers in general.
- 1527. — Typhoid fever.
- 1528. — Meningitis.
- 1529.1. — Mental and emotional disability.
 - (1). In general.
 - (2). Physical injury requirement.
 - (3). Particular conditions or diseases.
 - (4). — In general.
 - (5). — Depression.
 - (6). — Post-traumatic stress disorder.
- 1530.1. Occupational diseases.
- 1530.2. — In general.
- 1530.3. — Particular diseases.
 - (1). In general.
 - (2). Lung diseases.
 - (3). Heart and cardiovascular diseases.
 - (4). Repetitive injury; cumulative trauma.
 - (5). Mental and emotional disability.
- 1531.1. Particular injuries and consequences.
- 1531.2. — In general.
- 1531.3. — Consequences of exertion in general.
- 1531.4. — Back injuries.
- 1531.5. — Head, neck, and shoulder injuries.
- 1531.6. — Injuries to extremities.
- 1531.7. — Repetitive injury; cumulative trauma.
 - (1). In general.
 - (2). Carpal tunnel syndrome.
- 1531.8. — Injuries to blood vessels; strokes and aneurysms.
- 1531.9. — Injuries to heart.
 - (1). In general.
 - (2). Physical exertion or strain.
 - (3). Mental stress.
 - (4). Police officers and firefighters.
- 1531.10. — Injuries to eyes and impairment of vision.
- 1531.11. — Injuries to ears and impairment of hearing.
- 1531.12. — Injuries to sexual organs.
- 1531.13. — Hernia.
 - (1). In general.
 - (2). Immediate descent or appearance of hernia.

413. WORKERS' COMPENSATION

**XVI. PROCEEDINGS TO SECURE
COMPENSATION.(Cont'd)**

- (3). Preexisting hernia or weakened structural condition.
- (4). Death or disability resulting from hernia.
- 1543. Successive injuries and recurrence of disability.
- 1544.1. Aggravation of previously impaired condition.
- 1544.2. — In general.
- 1544.3. — Aggravation of preexisting disease, generally.
- 1544.4. — Necessity of accident and causal connection.
- 1544.5. — Effect of preexisting condition.
- 1544.6. — Aggravation of particular condition or disease.
 - (1). In general.
 - (2). Back.
 - (3). Head, neck, and shoulders.
 - (4). Injuries to extremities.
 - (5). Heart and cardiovascular conditions.
 - (6). Lung diseases.
 - (7). Arthritis.
 - (8). Mental and emotional disability.
- 1544.7. — Aggravation of prior, work-related injury.
 - (1). In general.
 - (2). Back injuries.
 - (3). Head, neck, and shoulder injuries.
 - (4). Injuries to extremities.
 - (5). Repetitive injury; cumulative trauma.
 - (6). — In general.
 - (7). — Carpal tunnel syndrome.
 - (8). Heart and cardiovascular conditions.
 - (9). Lung diseases.
 - (10). Arthritis.
 - (11). Mental and emotional disability.
- 1555. Customary acts and acts by consent, direction, or acquiescence of employer.
- 1556. Negligence.
- 1557. Violation of safety regulations by employer.
- 1558. Acts for personal comfort or convenience of employee.

**XVI. PROCEEDINGS TO SECURE
COMPENSATION.(Cont'd)**

- 1559. Acts for individual purpose or benefit of employee.
- 1560. Deviation from employer's business.
- 1561. Acts for benefit of coemployee or of third person.
- 1562. Horseplay and practical joking.
- 1563. Assaults; injuries by acts of co-worker or third person.
 - 1563.1. — In general.
 - 1563.2. — Acts of co-worker.
 - 1563.3. — Acts of third person.
- 1567. Accidental shooting or stabbing.
- 1568. Drowning.
- 1569. Storms and floods.
- 1570. Injuries by lightning.
- 1571. Sunstroke or heat prostration.
- 1572. Exposure to cold and wetting.
- 1573. Injuries before or after working hours.
- 1574. Going to or from work.
- 1575. Going to or from meals.
- 1576. Employee away from working place.
- 1577. Place of injury with reference to plant or premises of employer.
- 1578. — In general.
- 1579. — Outside workers.
- 1580. Explosions and fires.
- 1581. Injuries in operation, care, or repair of vehicles in general.
- 1582. Injuries by trains or cars in general.
- 1583. Injuries in use or operation of elevators.
- 1584. Injuries in operation of aircraft.
- 1585. Loading or unloading cars or vehicles.
- 1586. Injuries by insects or animals.
- 1587. Injuries by slipping, tripping, or falls in general.
 - 1588. — In general.
 - 1589. — Proof of fact of fall.
 - 1590. — Accidental character.
 - 1591. — Cause.
 - 1592. — Relation to employment in general.
 - 1593. — As cause of injury or disability in general.
- 1594. Injuries by objects falling or thrown.
- 1595. Jolts and jars.
- 1596. Electric shock and burns.
- 1597. Public employees in general.

413. WORKERS' COMPENSATION

8. DEFENSES AGAINST CLAIM FOR INJURY.

- 1598. In general.
- 1599. Negligence of employee and assumption of risk.
- 1600. Serious, intentional, or willful misconduct.
- 1601. Injury caused by employee's willful intention to injure another.
- 1602. Disobedience of rules, orders, and warnings in general.
- 1603. Violation of laws and regulations.
- 1604. Intoxication.
- 1605. Failure to use safety appliances.
- 1606. Intentional self-injury.
- 1607. Suicide.

9. AMOUNT AND PERIOD OF COMPENSATION.

- 1609.1. In general.
- 1609.2. Basis for determination of amount; computation of earnings.
- 1609.3. — In general.
- 1609.4. — Wage rates or average earnings, in general.
- 1609.5. — Weekly wage or earnings, in general.
- 1609.6. — Length of time in employment prior to injury.
- 1609.7. — Wages of employee of same class.
- 1609.8. — Part time, seasonal, or intermittent employment.
- 1609.9. — Earnings from multiple jobs or employers.
- 1609.10. — Board, lodging, and other non-monetary compensation.
- 1609.11. — Tips, bonuses, and fringe benefits.
- 1627.1. Disability benefits.
- 1627.2. — In general.
- 1627.3. — Commencement of disability or compensation; date of disability.
- 1627.4. — Duration and termination of disability in general.
- 1627.5. — Amount of benefits in general.
- 1627.6. — Temporary or permanent disability in general.
- 1627.7. — Temporary disability.
 - (1). In general.
 - (2). Particular cases.
- 1627.8. — Permanent disability.

XVI. PROCEEDINGS TO SECURE COMPENSATION.(Cont'd)

- (1). In general.
- (2). Particular cases.
- 1627.9. — Total or partial disability in general.
- 1627.10. — Partial disability.
 - (1). In general.
 - (2). Particular cases.
 - (3). Percentage awards.
- 1627.11. — Total disability.
 - (1). In general.
 - (2). Particular cases.
- 1627.12. — Supplemental and impaired earning benefits.
- 1627.13. — Previous impairment or multiple injuries; apportionment.
 - (1). In general.
 - (2). Successive employers or insurers.
 - (3). Multiple compensable injuries or impairments.
- 1627.14. — Maximum medical improvement.
- 1627.15. — Multiple awards for single injury.
- 1627.16. — Limitations on amount; maximum, minimum, or extended benefits.
- 1627.17. — Employment and earning capacity.
 - (1). In general.
 - (2). Impairment of earning capacity.
 - (3). Acceptance of employment or amount of wages as affecting eligibility.
 - (4). Incapacity for work or employment in general.
 - (5). Odd lot.
 - (6). Inability to work without pain.
 - (7). Light or occasional employment; accommodated work.
 - (8). Employment in same work as when injured; claimant's training and qualifications.
 - (9). Release to return to work.
 - (10). Economic conditions affecting employment.
 - (11). Efforts to obtain work; acceptance of employment.

413. WORKERS' COMPENSATION

XVI. PROCEEDINGS TO SECURE COMPENSATION.(Cont'd)

- (12). Departure from position; withdrawal from workforce.
- 1646.1. Scheduled and other particular injuries.
- 1646.2. — In general.
- 1646.3. — Medical impairment; impairment ratings.
- 1646.4. — Diseases.
- 1646.5. — Effect of previous impairment on scheduled injury; apportionment.
- 1646.6. — Multiple scheduled injuries.
- 1646.7. — Injury to the body as a whole.
- 1646.8. — Muscular strains and consequences of exertion generally.
- 1646.9. — Heart, cardiovascular, and lung conditions.
- 1646.10. — Head, neck, or shoulder injuries.
- 1646.11. — Back injuries.
- 1646.12. — Hip injuries.
- 1646.13. — Loss of, or injury to, member in general.
- 1646.14. — Loss of, or injury to, leg.
- 1646.15. — Loss of, or injury to, ankle, foot, or toes.
- 1646.16. — Loss of, or injury to, arm.
- 1646.17. — Loss of, or injury to, wrist, hand, or fingers.
- 1646.18. — Eye injuries and impairment of vision.
- 1646.19. — Ear injuries and impairment of hearing.
- 1646.20. — Hernia.
- 1646.21. — Skin conditions.
- 1646.22. — Mental and emotional disability.
- 1646.23. — Previous impairment; apportionment.
- 1647.1. Other benefits.
- 1647.2. — In general.
- 1647.3. — Pain and suffering.
- 1647.4. — Disfigurement.
- 1647.5. — Rehabilitation and retraining compensation.
- 1647.6. — Compensation for death.
- 1647.7. Deductions and offsets.

XVI. PROCEEDINGS TO SECURE COMPENSATION.(Cont'd)

- 1647.8. Increase or reduction of compensation.
- 1647.9. — In general.
- 1647.10. — Misconduct.
- 1647.11. — Minimizing or aggravating injury.
- (1). In general.
- (2). Refusal or neglect to submit to medical treatment.
- 10. KNOWLEDGE OR NOTICE OF ACCIDENT,
INJURY, OR DISABILITY.**
1676. In general.
1677. Excuse for failure to give, or delay in giving, notice in general.
1678. Actual knowledge in general.
1679. Knowledge of agent or representative.
1680. Prejudice from failure to give, or delay in giving, notice.
- 11. CLAIM OR PETITION FOR COMPENSATION
AND INSTITUTION OF PROCEEDINGS.**
1681. In general.
1682. Time for filing claim or instituting proceedings.
1683. Excuses for failure to make, or delay in making claim, and tolling of statute.
1684. Prejudice from delay in making, or failure to make, claim.
- (O) AFFIDAVITS AND DEPOSITIONS.**
1685. Affidavits.
1686. Discovery and depositions.
Privileges, see §1703.5.
- (P) HEARING OR TRIAL.**
- 1. IN GENERAL.**
1687. In general.
- 1687.5. Pretrial matters.
1688. Necessity of trial or hearing.
1689. Notice.
1690. Time, place, and adjournment.
1691. Scope and extent; matters and evidence considered.
1692. Right to open and close.
1693. View and inspection.
1694. Personal examination of claimant.

413. WORKERS' COMPENSATION

2. PRODUCTION AND RECEPTION OF EVIDENCE AND EXAMINATION OF WITNESSES.

- 1695. Production and reception of evidence.
- 1696. — In general.
- 1697. — Right to introduce.
- 1698. — Formal introduction.
- 1699. — Taking ex parte.
- 1700. — Order of proof.
- 1701. — Reopening hearing.
- 1702. — Effect of evidence admitted without objection.
- 1703. Summoning and examining witnesses.
- 1703.5. Privileges.

3. QUESTIONS OF LAW AND FACT.

- 1704. In general.
- 1705. Mixed questions of law and fact.
- 1706. Employments included.
- 1707. Employers within intent of acts.
- 1708. Employees within intent of acts.
- 1709. — In general.
- 1710. — Independent contractors.
- 1711. Acceptance or election to come under act.
- 1712. Dependents entitled to compensation.
- 1713. — In general.
- 1714. — Spouses living apart.
- 1715. — Extent of dependency.
- 1716. Injuries for which compensation may be had in general.
- 1717. Remote and proximate consequences.
- 1718. Arising out of and in the course of employment.
- 1719. — In general.
- 1720. — Going to or from work.
- 1721. Intoxication and serious and willful misconduct of employee.
- 1722. Amount and period of compensation.
- 1723. — In general.
- 1724. — Compensation for disability.
- 1725. — Minimizing injury.
- 1726. Proceedings to secure compensation.

4. JURY TRIAL.

- 1727. In general.
- 1728. Instructions.
- 1729. Verdict and findings.

5. REFERENCE.

- 1730. In general.
- 1731. Province of arbitrator or referee.

6. FINDINGS OF FACT AND CONCLUSIONS OF LAW BY BOARD, COMMISSION, OR COURT.

- 1732. Necessity.
- 1733. — In general.
- 1734. — Admitted or stipulated facts.
- 1735. — Issues not involved or presented.
- 1736. Character of finding as one of fact or law.
- 1737. Form, contents, and sufficiency.
- 1738. — In general.
- 1739. — Separate statement of findings of fact and conclusions of law.
- 1740. — Opinion or reasons.
- 1741. — Recital of evidence.
- 1742. — Conclusions or belief.
- 1743. — Definiteness and certainty.
- 1744. — Ultimate or evidentiary facts.
- 1745. Conformity to evidence.
- 1746. Conformity to issues.
- 1747. Inconsistent findings and conclusions.
- 1748. — In general.
- 1749. — Findings of fact as supporting conclusions of law.
- 1750. — General and specific findings.
- 1751. Particular facts and conclusions.
- 1752. — In general.
- 1753. — Causes and circumstances of injury.
- 1754. — Persons entitled and dependency.
- 1755. — Disability.
- 1756. — Earnings and impairment of earning capacity.
- 1757. — Employment in interstate commerce.
- 1758. — Notice of injury and claim of compensation.
- 1759. Modification and correction.
- 1760. Construction and operation.
- 1761. — In general.
- 1762. — Implied findings.
- 1763. — Effect of failure to find.
- 1764. Conclusiveness and effect.

(Q) AWARD OR JUDGMENT.

- 1765. In general.

413. WORKERS' COMPENSATION

XVI. PROCEEDINGS TO SECURE COMPENSATION.(Cont'd)

- 1766. Consent judgment, decree, or award.
- 1767. Form and contents and nature and extent of relief.
- 1768. — In general.
- 1769. — Amount and period of compensation.
- 1770. — Concurrent or consecutive payments.
- 1771. — Persons liable.
- 1772. — Persons entitled.
- 1773. Time for making or rendition.
- 1774. Notice of, and proceedings for, rendition or entry.
- 1775. Record.
- 1776. Conformity to pleadings, proof, and findings.
- 1777. Modification, amendment, and correction.
- 1778. — In general.
- 1779. — Time for correction.
- 1780. Opening and vacating.
- 1781. — In general.
- 1782. — Grounds in general.
- 1783. — Fraud or mistake.
- 1784. — Time for application or proceedings.
- 1785. — Proceedings to open or vacate.
- 1786. — Effect.
- 1787. Equitable relief.
- 1788. Conclusiveness and effect.
- 1789. — In general.
- 1790. — Finality.
- 1791. — Matters concluded.
- 1792. — Persons concluded.
- 1793. — Collateral attack.

(R) REHEARING AND NEW TRIAL.

- 1794. Right and power to grant.
- 1795. Grounds.
- 1796. Proceedings to procure.
- 1797. — In general.
- 1798. — Time for application.
- 1799. — Notice.
- 1800. — Hearing and determination of application.
- 1801. — Vacation of order.

XVI. PROCEEDINGS TO SECURE COMPENSATION.(Cont'd)

- 1802. Proceedings on rehearing or at new trial.
- 1803. Successive applications.

(S) REVIEW BY BOARD OR COMMISSION.

- 1804. Nature and form of remedy.
- 1805. Jurisdiction.
- 1806. Decisions reviewable.
- 1807. Right of review.
- 1808. Taking and perfecting proceedings for review.
- 1809. — In general.
- 1810. — Notice.
- 1811. — Petition, application, or other pleading.
- 1812. Record.
- 1813. Dismissal, hearing, and rehearing.
- 1814. Scope and extent of review in general.
- 1815. Trial de novo.
- 1816. — In general.
- 1817. — Issues and matters considered.
- 1818. — Evidence.
- 1819. — Trial.
- 1820. Questions of law or fact and findings.
- 1821. Determination and disposition of proceeding.

(T) REVIEW BY COURT.

1. IN GENERAL.

- 1822. In general.
- 1823. Certification of questions of law.
- 1824. Appeal.
- 1825. Certiorari or writ of review.
- 1826. Action to set aside award or injunction proceedings.
- 1827. Jurisdiction.
- 1828. — In general.
- 1829. — Appeal.
- 1830. — Certiorari or writ of review.
- 1831. — Action to set aside or injunction proceedings.

2. VENUE.

- 1832. In general.

3. DECISIONS REVIEWABLE.

- 1833. In general.

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XVI. PROCEEDINGS TO SECURE COMPENSATION.(Cont'd)

- 1834. On appeal.
- 1835. On certiorari or writ of review.
- 1836. In action to set aside award.

4. RIGHT OF REVIEW.

- 1837. Persons entitled.
- 1838. — In general.
- 1839. — Nonresidents.
- 1840. — State or state officer.
- 1841. Estoppel, waiver, or agreements affecting right.
- 1842. — In general.
- 1843. — Payment and performance of award.
- 1844. — Acceptance of payments.

5. PRESENTATION AND RESERVATION BELOW OF GROUNDS OF REVIEW.

- 1845. Necessity.
- 1846. — In general.
- 1847. — Theory of claim or defense.
- 1848. — Jurisdiction and venue.
- 1849. — Time to proceed and limitations.
- 1850. — Parties.
- 1851. — Notice of injury and claim for compensation.
- 1852. — Pleadings.
- 1853. — Trial or hearing.
- 1854. — Arbitration, reference, and proceedings thereon.
- 1855. — Evidence, depositions, and witnesses.
- 1856. — Award or judgment.
- 1857. — Proceedings for rehearing.
- 1858. Form and sufficiency.
- 1859. — In general.
- 1860. — Definiteness and certainty.
- 1861. — Objections and exceptions and rulings thereon in general.
- 1862. — Request for instructions.
- 1863. — Request for special findings.
- 1864. — Application for rehearing.
- 1865. — Application, or claim, for review.
- 1866. — Motion for new trial or in arrest of judgment.

6. PARTIES.

- 1867. Proper and necessary parties generally.

XVI. PROCEEDINGS TO SECURE COMPENSATION.(Cont'd)

- 1868. Designation and description.
- 1869. New parties and change of parties.
- 1870. Death.
- 1871. Defects, objections, and amendment.

7. TAKING AND PERFECTING PROCEEDINGS FOR REVIEW.

- 1872. In general.
- 1873. Time for proceeding.
- 1874. — In general.
- 1875. — Prematurity.
- 1876. — When time begins to run (notice).
- 1877. — Effect of proceedings for rehearing, new trial, or correction of award.
- 1878. — Excuse for delay, and extension of time.
- 1879. — Waiver of objections.
- 1880. — Effect of delay.
- 1881. — Evidence of timely appeal; proof.
- 1882. Notice.
- 1882.1. — In general.
- 1883. — Necessity and waiver.
- 1884. — Sufficiency.
- 1885. Process or writ.
- 1886. Petition or application.
- 1887. — In general.
- 1888. — Certiorari.
- 1889. — Suit to set aside award.
- 1890. Answer or return.
- 1891. Reply.
- 1892. Necessity of bond or other security.

8. EFFECT OF PROCEEDINGS FOR REVIEW AND SUPERSEDEAS OR STAY.

- 1893. Effect of institution or perfection of proceedings for review.
- 1894. Supersedeas or stay.

9. RECORD.

- 1895. In general.
- 1896. Bill of exceptions.
- 1897. Abstract.
- 1898. Case.
- 1899. Agreed statement of facts.
- 1900. Transcripts.
- 1901. Transmission.
- 1902. Defects, objections, and amendment.
- 1903. Conclusiveness of record.

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XVI. PROCEEDINGS TO SECURE COMPENSATION.(Cont'd)

1904. Questions presented for review.

1905. Matters not apparent of record.

10. ASSIGNMENTS OF ERROR AND BRIEFS.

1906. Assignments of error.

1907. Briefs.

11. DISMISSAL, WITHDRAWAL, ABANDONMENT, HEARING, AND REHEARING.

1908. Dismissal, withdrawal, or abandonment
of appeal.

1909. Submission and hearing; rehearing.

12. SCOPE AND EXTENT OF REVIEW IN GENERAL.

1910. In general.

1911. Matters or evidence considered.

1912. Questions considered.

1913. Review when facts not found or insuffi-
ciently found.

1914. Trial de novo in general.

1915. Issues and matters considered on trial
de novo.

1916. — In general.

1917. — Limitation to original claim.

1918. Pleadings on trial de novo.

1919. — In general.

1920. — Issues, proof, and variance.

1921. Evidence on trial de novo.

1922. — In general.

1923. — Burden of proof.

1924. — Weight and sufficiency.

1925. Trial on trial de novo.

1926. — In general.

1927. — Submission of issues to jury.

1928. — Direction of verdict and demurrer
to evidence.

1929. — Instructions.

1930. — Findings.

1931. — Verdict.

1932. New trial after trial de novo.

1933. Errors waived in appellate tribunal.

1934. Parties entitled to allege error.

1935. Presumptions and burden of showing
error.

1936. Discretion.

1937. Harmless error.

12A. QUESTIONS OF LAW OR FACT, FINDINGS, AND VERDICT.

1938. In general.

1939. Review of decision of department,
commission, board, officer, or arbi-
trator.

1939.1. — In general; questions of law or
fact.

1939.2. — Review of fact questions in gen-
eral.

1939.3. — Conclusiveness of administra-
tive findings in general.

1939.4. — Sufficiency of evidence in sup-
port.

(1). In general.

(2). "Some" or "any" evidence.

(3). Competent evidence.

(4). Substantial evidence.

1939.5. — Conflicting evidence.

1939.6. — Weight of evidence and credi-
bility of witnesses.

1939.7. — Inferences or conclusions from
facts proved.

1939.8. — Expert testimony.

1939.9. — Findings against claimant or
party having burden of proof.

1939.10. — Concurrence or disagreement
of administrative authorities.

1939.11. — Particular findings.

(1). In general.

(2). Jurisdictional facts.

(3). Employments, employers, and em-
ployees.

(4). Dependency and relationship.

(5). Accident or injury and conse-
quences thereof in general.

(6). Cause of death.

(7). Injuries arising out of and in
course of employment.

(8). Defenses against claims.

(9). Amount and period of compensa-
tion.

(10). Knowledge or notice of accident,
injury, or disability.

(11). Claim or petition for compensa-
tion and time for institution of
proceedings.

1939.12. — Occupational disease cases.

1940. Review of court's decision in action for
compensation.

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13. DETERMINATION AND DISPOSITION OF PROCEEDING.

- 1941. In general.
- 1942. Rendering final or independent judgment.
- 1943. Form and contents of judgment or decree.
- 1944. Affirmance.
- 1945. Modification.
- 1946. Reversal.
- 1947. Annulment, vacation, and setting aside of award.
- 1948. Dismissal or nonsuit of cause.
- 1949. Remand in general.
- 1950. Instructions on remand.
- 1951. Further proceedings before board, commission, or trial court.
- 1952. Amendment, modification, or setting aside of appellate decision, and collateral attack.
- 1953. Successive appeals.

14. PROCEEDINGS FOR FURTHER REVIEW.

- 1954. Nature and form of remedy.
- 1955. Jurisdiction.
- 1956. Decisions reviewable.
- 1957. Right of review.
- 1958. Presentation and reservation below of grounds for review.
- 1959. Parties.
- 1960. Taking and perfecting proceedings for review.
- 1961. Assignment of error.
- 1962. Record.
- 1963. Dismissal of appeal.
- 1964. Scope and extent of review.
- 1965. Parties entitled to allege error.
- 1966. Presumptions.
- 1967. Discretion of lower court.
- 1968. Harmless error.
 - (1). In general.
 - (2). Rulings as to evidence in general.
 - (3). Admission of evidence.
 - (4). Exclusion of evidence.
 - (5). Argument and conduct of counsel.
 - (6). Submission of issues to jury.
 - (7). Instructions.
 - (8). Findings, award, or judgment.
- 1969. Questions of law or fact, findings, and verdict.

XVI. PROCEEDINGS TO SECURE COMPENSATION.(Cont'd)

- 1970. Determination and disposition of cause.
- 1971. — In general.
- 1972. — Affirmance.
- 1973. — Modification.
- 1974. — Reversal.
- 1975. — Remand.
- 1976. — New trial.
- 1977. Rehearing.

15. LIABILITY ON BONDS AND SECURITIES.

- 1978. In general.
- 1979. Determination of liability.

(U) COSTS AND ATTORNEY FEES.

1. IN GENERAL.

- 1980.1. In general.
- 1980.2. Discretion.
- 1980.3. Frivolity or bad faith; sanctions.
- 1980.4. Particular cases in general.
- 1980.5. Costs recoverable.
- 1980.6. Amount.
- 1980.7. Costs on appeal or proceedings to set aside award.

2. ATTORNEY FEES.

- 1980.8. In general.
- 1980.9. Discretion.
- 1980.10. Particular cases in general.
- 1980.11. Grounds for award of fees; factors considered.
- 1980.12. — In general.
- 1980.13. — Result or outcome of proceedings.
- 1980.14. — Bad faith; reasonableness of employer's or insurer's conduct.
- 1980.15. — Effect of claimant's conduct or misconduct.
- 1980.16. Amount.
- 1980.17. Fees on appeal or proceedings to set aside award.
- 1980.18. Payment and commutation.
- 1980.19. Lien.

3. PROCEEDINGS.

- 1980.20. In general.
- 1980.21. Evidence.
- 1980.22. — In general.

413. WORKERS' COMPENSATION

XVI. PROCEEDINGS TO SECURE COMPENSATION.(Cont'd)

- 1980.23. — Weight and sufficiency.
- 1980.24. — Presumptions and burden of proof.
- 1980.25. Hearing.
- 1980.26. Questions of law or fact.
- 1980.27. Review.
- 1980.28. — In general.
- 1980.29. — Standard of review.

XVII. INCREASE, DIMINUTION, TERMINATION, REINSTATEMENT, OR ADDITIONAL AWARD OF DISABILITY COMPENSATION.

(A) AWARDS GENERALLY.

1. ADJUSTMENT OR TERMINATION OF COMPENSATION.

- 1990. In general.
- 1991. Statutory regulation.
- 1992. Awards, orders, or findings which may be altered or set aside.
- 1993. — In general.
- 1994. — Period of compensation.
- 1995. — Denial or termination of compensation.
- 1996. — Previously reviewed or modified award.
- 1997. — Judgments.
- 1998. Power and jurisdiction.
- 1999. — In general.
- 2000. — Retroactive orders.
- 2001. Conclusiveness of original award or judgment.
- 2002. Necessity and sufficiency of grounds.
- 2003. — In general.
- 2004. — Good cause.
- 2005. — Change of condition in general.
- 2006. — What constitutes change of condition.
- 2007. — Injuries not included or considered in original award.
- 2008. — Subsequently ascertainable disability of another type (permanent, partial, or total).
- 2009. — Increase of disability.
- 2010. — Termination or decrease of disability.
- 2011. — Recurrence of disability.
- 2012. — Diminution or increase of earnings.

XVII. INCREASE, DIMINUTION, TERMINATION, REINSTATEMENT, OR ADDITIONAL AWARD OF DISABILITY COMPENSATION.(Cont'd)

- 2013. Nature and form of proceedings.
- 2014. Objections to proceedings, and waiver.
- 2015. Time for application and limitations.
- 2016. — In general.
- 2017. — Permanent partial or total disability subsequently ascertainable.
- 2018. — Other injuries in same accident not previously compensated.
- 2019. — Reclassification.
- 2020. Conditions precedent in general.
- 2021. Notice of accident, application, trial, or hearing.
- 2022. Persons entitled to apply and parties to application.
- 2023. Pleading.
- 2024. — In general.
- 2025. — Issues, proof, and variance.
- 2026. Burden of proof.
- 2027. Presumptions.
- 2028. Admissibility of evidence.
- 2029. Weight and sufficiency of evidence.
- 2030. — In general.
- 2031. — Hip, leg, and foot injuries.
- 2032. — Shoulder, arm, hand, and finger injuries.
- 2033. — Back and spine injuries.
- 2034. — Eye injuries.
- 2035. — Head injuries.
- 2036. — Hernia or rupture.
- 2037. Dismissal before hearing.
- 2038. Hearing or trial.
- 2039. — In general.
- 2040. — Scope and extent of inquiry.
- 2041. — Production and reception of evidence.
- 2042. — Questions of law or fact.
- 2043. — Findings.
- 2044. Stay of proceedings.
- 2045. Determination or award.
- 2046. — In general.
- 2047. — Conformity to petition or application.
- 2048. — Conformity to evidence and findings.
- 2049. — Relief granted.

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XVII. INCREASE, DIMINUTION, TERMINATION, REINSTATEMENT, OR ADDITIONAL AWARD OF DISABILITY COMPENSATION.(Cont'd)

- 2050. — Conclusiveness and effect.
- 2051. Rehearing.

2. REVIEW.

- 2052. In general.
- 2053. Jurisdiction.
- 2054. Decisions and orders reviewable.
- 2055. Presentation and reservation below of grounds for review.
- 2056. Time for taking and perfecting proceeding for review.
- 2057. Record.
- 2058. Evidence and matters considered.
- 2059. Presumptions.
- 2060. Matters of discretion.
- 2061. Questions of fact and sufficiency of evidence.
- 2062. Harmless error.
- 2063. Trial de novo.
- 2064. Determination and disposition.

(B) AGREEMENTS AND SETTLEMENTS.

- 2065. Right and power to modify or set aside.
- 2066. — In general.
- 2067. — Conclusiveness of original claim or award.
- 2068. — What agreements or settlements are reviewable.
- 2069. — Effect of satisfaction, receipt, or release.
- 2070. — Effect of nature of disability.
- 2071. Persons entitled to relief and jurisdiction.
- 2072. Nature and form of proceedings.
- 2073. Time for application and limitations.
- 2074. Conditions precedent; notice.
- 2075. Application.
- 2076. Evidence.
- 2077. Hearing or trial, and determination.
- 2078. Rehearing.
- 2079. Review.

XVIII. OFFENSES AND PENALTIES.

- 2080. Offenses and responsibility therefor.
- 2081. Enforcement.

XIX. EMPLOYER'S REPORT OF ACCIDENT AND NOTICE OF DEATH TO BENEFICIARIES.

- 2082. Report of accidents.
- 2082.5. Records of accidents or injuries.
- 2083. Notice of death to beneficiaries.

XX. EFFECT OF ACT ON OTHER STATUTORY OR COMMON-LAW RIGHTS OF ACTION AND DEFENSES.

(A) BETWEEN EMPLOYER AND EMPLOYEE.

1. EXCLUSIVENESS OF REMEDIES AFFORDED BY ACTS.

- 2084. In general.
- 2085. Federal acts.
- 2086. Effect of municipal pensions or compensation.
- 2087. Failure to furnish, or negligence in furnishing medical or surgical treatment.
- 2088. Matters not within scope of acts in general.
- 2089. Persons and employments not within acts.
- 2090. Injuries not within acts.
- 2091. Diseases not within acts.
- 2092. Failure to comply with lawful requirements.
- 2093. Willful or deliberate act or negligence.
- 2094. Gross negligence.
- 2095. Failure to install or maintain safety devices.
- 2096. Violation of safety regulations.
- 2097. Violation of child labor laws.
- 2098. Rejection of act.
- 2099. Failure to comply with act.
- 2100. Failure to provide insurance or to secure compensation.
- 2101. Failure to give notice.
- 2102. Failure to pay compensation.

2. ELECTION AND WAIVER OF REMEDIES.

- 2103. In general.
- 2104. Election to take compensation.
- 2105. — In general.
- 2106. — Proceedings to obtain, and award of compensation.
- 2107. — Acceptance of payments.
- 2108. — Right of infant to sue at law after election to take compensation.

413. WORKERS' COMPENSATION

XX. EFFECT OF ACT ON OTHER STATUTORY OR COMMON-LAW RIGHTS OF ACTION AND DEFENSES.(Cont'd)

2109. Right to sue statutory employer at law after election to take compensation under statute.

3. DEFENSES; ABROGATION OR MODIFICATION OF COMMON-LAW DEFENSES.

- 2110. In general.
- 2111. Contractual assumption of risk.
- 2112. Reduction of damages for contributory negligence; comparative negligence.
- 2113. Negligence of employee as sole cause of injury.
- 2114. Failure of employee to elect to come under act.
- 2115. Persons and employments not within acts.
- 2116. Simple tool doctrine.
- 2117. Willful act or misconduct of employee.

4. NEGLIGENCE OF EMPLOYER AND MEASURE OF DAMAGES.

- 2118. Negligence of employer as essential to recovery.
- 2119. — In general.
- 2120. — Statutory presumption of negligence.
- 2121. Limitation of recovery or measure of damages.

5. ACTIONS.

- 2122. In general.
- 2123. Declaration, petition, or complaint.
- 2124. — In general.
- 2125. — Exceptions from act.
- 2126. — Election not to come under act.
- 2127. — Failure to comply with act.
- 2128. — Negligence.
- 2129. Plea, answer, or affidavit of defense.
- 2130. Reply.
- 2131. Amended and supplemental pleadings.
- 2132. Demurrer or exception.
- 2133. Issues, proof, and variance.
- 2134. Presumptions and burden of proof.
- 2135. Admissibility of evidence.
- 2136. Weight and sufficiency of evidence.
- 2137. Trial in general.
- 2138. Questions for jury.
- 2139. Instructions.

XX. EFFECT OF ACT ON OTHER STATUTORY OR COMMON-LAW RIGHTS OF ACTION AND DEFENSES.(Cont'd)

- 2140. Verdict and findings.
- 2141. Review.

(B) ACTION BY THIRD PERSON AGAINST EMPLOYER.

1. IN GENERAL.

- 2142. In general.
- 2142.10. Indemnity or contribution.
- 2142.11. — In general.
- 2142.15. — Contribution.
- 2142.20. — Indemnity in general.
- 2142.25. — Indemnity, contractual.
- 2142.30. — Longshoremen or seamen, injuries to.
- 2142.35. — Products liability claims.
- 2142.40. — Comparative fault; apportionment of damages.
- 2142.50. Actions by dependents, representatives, or survivors.
- 2142.51. — In general.
- 2143. — Action by parent for injury to child.
- 2144. — Action by spouse or child of injured employee.

2. ACTION FOR DEATH BY WRONGFUL ACT.

- 2145. In general.
- 2146. Death of minor.
- 2147. Action by, or for benefit of, person not entitled to compensation.
- 2148. Employer's nonacceptance of, or non-compliance with, act.
- 2149. Death resulting from willful act or omission or gross negligence.
- 2150. Option, election, waiver, or estoppel.
- 2151. Necessity for tort chargeable to employer.
- 2152. Defenses; abrogation of common law defenses.
- 2153. Effect of award, judgment, or finding in compensation proceeding.
- 2154. Procedure.
- 2154.1. — In general.
- 2155. — Pleading.
- 2156. — Evidence.
- 2157. — Trial, judgment, and review.

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(C) ACTION AGAINST THIRD PERSONS IN GENERAL FOR EMPLOYEE'S INJURY OR DEATH.

1. RIGHT OF ACTION OF EMPLOYEE OR REPRESENTATIVE GENERALLY.

- 2158. In general.
- 2159. Relation of parties to compensation act and occupations covered thereby.
- 2160. What persons liable as third persons.
- 2161. — In general.
- 2162. — Employer as third person.
- 2163. — Lessor of property.
- 2164. — Principal employer or employer of injured person.
- 2165. — General, principal, or original contractor contracting with employer of injured person.
- 2166. — Subcontractor contracting with employer of injured person.
- 2167. — Subcontractor injuring employee of another subcontractor.
- 2168.1. — Agents of employer of injured person.
 - (1). In general.
 - (2). Co-workers.
 - (3). Supervisors; managers.
 - (4). Officers.
- 2169. — Vessel.
- 2170. Liability of third person dependent on place of injury.

2. ELECTION OF REMEDIES.

- 2171. In general.
- 2172. Limitation of effect of election to cases of furtherance of common enterprise or accomplishment of same or related purposes.
- 2173. Election by particular person in case of death by wrongful act (dependents, widow, representatives).
- 2174. Form and requisites of election of compensation.
- 2175. — In general.
- 2176. — Notice of election.
- 2177. — Agreement, settlement, or release.
- 2178. — Making or filing claim or prosecuting compensation proceedings.
- 2179. — Award of compensation.
- 2180. — Accepting payment in general.
- 2181. — Acceptance of payment in cases of death of employee.

XX. EFFECT OF ACT ON OTHER STATUTORY OR COMMON-LAW RIGHTS OF ACTION AND DEFENSES.(Cont'd)

- 2182. — Acceptance of payment under foreign statute.
- 2183. — Accepting loans, advances, or gifts.
- 2184. — Accepting hospital, medical, or nursing expenses.
- 2185. Invalidity and avoidance of election; reinstatement or restoration of right to sue.
- 2186. Effect on employee's right to sue of employer's or insurer's failure to sue, or permitting employee to sue.
- 2187. Evidence and questions of law or fact as to election.

3. RIGHT OF EMPLOYER OR INSURER TO REMEDY OF EMPLOYEE OR EMPLOYEE'S REPRESENTATIVE.

- 2188. In general.
- 2189. Subrogation or assignment in general.
- 2190. Right of insurer to remedy against third person or to reimbursement in general.
- 2191. Subrogation of or assignment to insurer.
- 2192. Rights as to cause of action based on employee's death.
- 2193. — In general.
- 2194. — Rights of insurer.
- 2195. Exclusive or concurrent right as between employer or insurers and employee or dependents to sue and recover.
- 2196. Necessity, sufficiency, and validity of claim for compensation.
- 2197. Necessity and sufficiency of award of, agreement for, or payment of, compensation.
- 2198. Notice by employer to employee.
- 2199. Notice by employer to tort-feasor.
- 2200. Persons liable as third persons or persons other than employers.
- 2201. Liability of third person to employee or dependents and succession to right of employee or dependents.
- 2202. — In general.
- 2203. — Settlement or release or attempted settlement as admission of liability.

413. WORKERS' COMPENSATION

XX. EFFECT OF ACT ON OTHER STATUTORY OR COMMON-LAW RIGHTS OF ACTION AND DEFENSES.(Cont'd)

- 2204. Assignment by employer or insurer.
- 2205. Waiver or loss by employer or insurer of right to sue.

4. DEFENSES.

- 2206. To employee's right of action.
- 2207. — In general.
- 2208. — Settlement or release by employer or insurer.
- 2209. To employer's or insurer's right of action.
- 2210. — In general.
- 2211. — Employee's contributory negligence or assumption of risk.
- 2212. — Negligence, wrong, or estoppel of employer.
- 2213. — Settlement or release by employee or personal representative.
- 2214. — Employee's recovery of damages against third party as bar to employer's or insurer's action.

5. ACTIONS AND PROCEEDINGS.

- 2215. In general.
- 2216. Time to sue, successive actions, and limitations.
- 2216.5. Computation of period of limitations.
- 2217. Abatement and revival.
- 2218. Parties.
- 2219. — In general.
- 2220. — Action in name of employer or insurer.
- 2221. — Action in name of employee, dependents, or personal representative.
- 2222. — Action in name of state.
- 2223. — Proper and necessary parties.
- 2224. — Joinder.
- 2225. — New parties, intervention, and substitution.
- 2226. Pleading.
- 2227. — In general.
- 2228. — Declaration, complaint, or petition.
- 2229. — Plea or answer.
- 2230. — Verification.
- 2231. — Issues, proof, and variance.
- 2232. Evidence.

XX. EFFECT OF ACT ON OTHER STATUTORY OR COMMON-LAW RIGHTS OF ACTION AND DEFENSES.(Cont'd)

- 2232.1. — In general.
- 2233. — Presumptions and burden of proof.
- 2234. — Admissibility.
- 2235. — Weight and sufficiency.
- 2236. Trial.
- 2237. — In general.
- 2238. — Instructions.
- 2239. — Questions of law or fact.
- 2240. Judgment and relief.
- 2241. New trial.
- 2242. Appeal and error.

6. AMOUNT AND ITEMS OF RECOVERY.

- 2243. Action by employee, dependents, or personal representative.
- 2244. Action by or on behalf of employer or insurer.
- 2245. — In general.
- 2246. — Medical, nursing, hospital, and burial expenses.
- 2247. — Expenses of investigation and litigation; attorney fees.

7. RIGHT TO PROCEEDS OF ACTION OR SETTLEMENT.

- 2248. In general.
- 2249. Rights of employee or dependent.
- 2250. Rights of employer or insurer.
- 2251. — In general.
- 2252. — Lien of employer or insurer.

(D) ACTION AGAINST PHYSICIAN OR SURGEON FOR MALPRACTICE.

- 2253. Rights of employee or his dependents.
- 2254. Rights of employer or insurer as subrogee or transferee.

414. ZONING AND PLANNING

SUBJECTS INCLUDED

Regulations of general application by local or regional bodies, limiting the long-term use of land

414. ZONING AND PLANNING

Zoning regulations dividing municipalities and other areas into districts and prescribing or limiting the construction or use of buildings and structures therein

The purpose, validity, construction, operation, modification, amendment, and repeal of such regulations

Nature, source and scope of the regulatory power and the manner of its exercise

Nonconforming uses predating zoning scheme

Regulation of land subdivision and development

Granting of zoning permits, approvals, variances, and exceptions

Administrative and judicial review of zoning regulations and proceedings

Enforcement of zoning regulations, including injunctions, fines, and criminal penalties

Appointment, tenure, powers, duties, and liabilities of zoning boards and officials

SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS

Maps and plans promulgated for the limited purpose of defining streets and lot lines, see **MUNICIPAL CORPORATIONS** and other government topics

Building codes establishing safety and construction standards, see **HEALTH**

Licenses to operate a business or practice a profession, see **LICENSES** and other particular topics

Federal or statewide environmental regulations, see **ENVIRONMENTAL LAW**

Historical preservation, regulations affecting, see **ENVIRONMENTAL LAW**

Private restrictions or covenants, see **COVENANTS**

Signs and billboards along highways, see **HIGHWAYS**

Non-locational mining regulation, see **MINES AND MINERALS**

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II. VALIDITY OF ZONING REGULATIONS, ⚭1035-1139.

(A) IN GENERAL, ⚭1035-1064.

(B) PARTICULAR MATTERS, ⚭1065-1124.

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III. MODIFICATION OR AMENDMENT; REZONING—Cont'd

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(B) PROCEEDINGS TO MODIFY OR AMEND, ⚭1175-1194.

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2. ACCESSORY USES AND BUILDINGS, ⚭1285-1299.

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(B) PROCEEDINGS FOR VARIANCES AND EXCEPTIONS, ⚭1535-1564.

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I. IN GENERAL.

1000. Nature in general.

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I. IN GENERAL.(Cont'd)

- 1001. Zoning and planning distinguished.
- 1002. Purpose.
- 1003. Power in general.
- 1004. Zoning power in general.
- 1005. Source and scope of power.
- 1006. — In general.
- 1007. — Police power.
- 1008. Constitutional and statutory provisions.
- 1009. — In general.
- 1010. — Validity of statutes.
- 1011. — Construction of statutes in general.
- 1012. — Retroactive operation.
- 1013. Matters subject to regulation.
- 1014. — In general.
- 1015. — Maps, plats, or plans; subdivisions.
- 1016. Factors considered.
- 1017. Who may exercise power.
- 1018. Regional or interstate agencies.
- 1019. Concurrent or conflicting regulations; preemption.
- 1020. — In general.
- 1021. — Environmental regulations and considerations.
- 1022. — Agriculture, farming, and rural uses.
- 1023. — Aviation and airports.
- 1024. — Handicapped and disabled individuals.
- 1025. — Liquor regulation.
- 1026. — Maps, plats, or plans; subdivisions.
- 1027. — Mining and minerals; sand and gravel.
- 1028. — Mobile homes; trailer parks.
- 1029. — Signs and billboards.
- 1030. — Telecommunications uses.
- 1031. — Trees, forests, and logging.
- 1032. — Water-related uses.
- 1033. — Other particular cases.

II. VALIDITY OF ZONING REGULATIONS.

(A) IN GENERAL.

Certainty, definiteness, vagueness, and overbreadth, see CONSTITUTIONAL LAW.

- 1035. Validity of regulations in general.
- 1036. Reasonableness in general.

II. VALIDITY OF ZONING REGULATIONS.(Cont'd)

- 1037. Temporary or emergency regulation.
- 1038. Matters affecting validity in general.
- 1039. Police power, relation to.
- 1040. Public health, safety, morals, or general welfare.
- 1042. Conformity to enabling statute.
- 1043. Comprehensive or general plan, validity.
- 1044. Conformity of regulations to comprehensive or general plan.
- 1045. Zoning by districts.
- 1046. Boundary lines.
- 1047. Propriety of classification and uniformity of operation in general.
- 1048. Discrimination.
- 1049. Spot zoning.
- 1050. Aesthetic considerations.
- 1051. Environmental or ecological considerations.
- 1052. Fire and traffic hazards.
- 1053. Hardship, loss, or benefit to particular persons.
- 1054. Effect on property value.
- 1055. Deprivation of property.
- 1056. Delegation of power in general.
- 1057. Standards governing conduct of administrative officials.
- 1058. Consent of property owners, requirement of.
- 1059. Change of conditions; future developments.
- 1060. Territorial limitations.
- 1061. Effect of partial invalidity; severability.
- 1062. — In general.
- 1063. — Particular regulations.

(B) PARTICULAR MATTERS.

- 1065. In general.
- 1066. Architectural or structural designs.
- 1067. — In general.
- 1068. — Area and frontage requirements.
- 1069. — Building or setback lines.
- 1070. — Height of buildings or structures.
- 1071. — One-family, two-family, or multiple dwellings.
- 1072. Circumstances affecting validity of use regulation.

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II. VALIDITY OF ZONING REGULATIONS.(Cont'd)

- 1073. Complete prohibition of use within municipality.
- 1074. Residence districts.
- 1075. — In general.
- 1076. — Uses permitted or excluded.
- 1077. — Validity of districting.
- 1078. — Zoning entire municipality as residential.
- 1079. Business, commercial, and industrial districts and uses in general.
- 1080. Agricultural uses, woodlands and rural zoning.
- 1081. Animals; stables and kennels.
- 1082. Automobile-related uses.
- 1083. — In general.
- 1084. — Streets.
- 1085. — Sales and service.
- 1086. — Garages and parking.
- 1087. — Distance from particular structures or uses.
- 1088. Aviation and airports.
- 1089. Churches and religious uses.
- 1090. Density of population.
- 1091. Entertainment and recreation; theaters.
- 1092. Fences and hedges.
- 1093. Hospitals, clinics, and other health-related facilities.
- 1094. — In general.
- 1095. — Abortion and birth control facilities.
- 1096. — Mental health facilities.
- 1097. Hotels, lodging, and short-term rentals.
- 1098. Landfills and waste disposal; junkyards.
- 1099. Mining and minerals; sand and gravel.
- 1100. Mobile homes; trailer parks.
- 1101. Mortuaries, cemeteries, and mausoleums.
- 1102. Nonconforming uses.
- 1103. Permits, certificates, and approvals.
- 1104. — In general.
- 1105. — Maps, plats, and plans; subdivisions.
- 1106. Prisons, jails, and rehabilitative institutions.
- 1107. Public and low-income housing.
- 1108. Residential facilities and daycare.
- 1109. Restaurants and food services.

II. VALIDITY OF ZONING REGULATIONS.(Cont'd)

- 1110. Schools and education.
- 1111. Signs and billboards.
- 1112. Sexually-oriented businesses; nudity.
- 1113. Stores and sales.
- 1114. — In general.
- 1115. — Shopping centers and malls.
- 1116. — Alcoholic beverages.
- 1117. — Firearms.
- 1118. Telecommunications towers and facilities.
- 1119. Variances and exceptions.
- 1120. Water-related uses and regulations.
- 1121. Moratorium regulations.
- 1122. Other particular uses.

(C) PROCEDURAL REQUIREMENTS.

- 1125. In general.
- 1126. Map.
- 1127. Report or recommendation of board or officer.
- 1128. Notice and hearing.
- 1129. — In general.
- 1130. — Sufficiency of notice or publication.
- 1131. — Hearing or meeting in general.
- 1132. — Access; open meetings.
- 1133. Enactment and voting.
- 1134. — In general.
- 1135. — Bias and disqualification.
- 1136. — Number of votes required.
- 1137. Filing, publication, and posting; minutes and findings.
- 1138. Approval of voters or property owners; referendum and initiative.

III. MODIFICATION OR AMENDMENT; REZONING.

(A) IN GENERAL.

- 1140. Power to modify or amend in general.
- 1141. Who may exercise power.
- 1142. Statutory provisions and limitations.
- 1143. Circumstances affecting validity of amendment in general.
- 1144. Reasonableness.
- 1145. Uniformity and discrimination.
- 1146. Public interest and need; general welfare.

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III. MODIFICATION OR AMENDMENT; REZONING.(Cont'd)

- 1147. Mistake in original zoning.
- 1148. Changed conditions.
- 1149. Comprehensive or general plan.
- 1150. — In general.
- 1151. — Conformity of change to plan.
- 1152. — Change to plan itself, in general.
- 1153. Contracts for amendments; conditions.
- 1154. Rights of objecting owners; continuity of regulation.
- 1155. Spot zoning.
- 1156. Hardship, loss, or benefits; property values.
- 1157. Traffic conditions.
- 1158. Particular uses or restrictions.
- 1159. — In general.
- 1160. — Changes to comprehensive or general plan.
- 1161. — Changes within residential districts in general.
 - (1). In general.
 - (2). Change from single-family to multiple dwelling.
 - (3). Change from multiple dwelling to single-family.
 - (4). Trailer parks and mobile homes.
- 1162. — Changes within business, commercial, or industrial districts in general.
- 1163. — Change from residential use to business, commercial, or industrial use.
- 1164. — Change from business, commercial, or industrial use to residential use.
- 1165. — Automobile-related uses; service, sales, parking.
- 1166. — Shopping centers and malls.
- 1167. — Agricultural uses, woodlands and rural zoning.
- 1168. — Mining and minerals; sand and gravel.
- 1169. — Sexually-oriented businesses; nudity.
- 1170. — Telecommunications towers and facilities.

(B) PROCEEDINGS TO MODIFY OR AMEND.

- 1175. In general.

III. MODIFICATION OR AMENDMENT; REZONING.(Cont'd)

- 1176. Petition or application; persons entitled to apply.
- 1177. Map.
- 1178. Report or recommendation of board or officer.
- 1179. Notice and hearing.
- 1180. — In general.
- 1181. — Sufficiency of notice or publication.
- 1182. — Hearing or meeting in general.
- 1183. — Access; open meetings.
- 1184. Objections and protests.
- 1185. Enactment and voting.
- 1186. — In general.
- 1187. — Bias and disqualification.
- 1188. — Number of votes required.
- 1189. Filing, publication, and posting; minutes and findings.
- 1190. Approval of voters or property owners; referendum and initiative.

IV. REPEAL OF REGULATIONS.

- 1195. In general.
- 1196. Manner of effecting repeal in general.
- 1197. Repeal by implication.

V. CONSTRUCTION, OPERATION, AND EFFECT.

(A) IN GENERAL.

- 1200. In general.
- 1201. As question of law.
- 1202. Applicability of general statutory construction principles.
- 1203. Strict or liberal construction in general.
- 1204. Free or unrestricted use of property.
- 1205. Intention and purpose of enacting body.
- 1206. Meaning of language.
- 1207. — In general.
- 1208. — Ambiguity.
- 1209. Ordinance as a whole, and intrinsic aids.
- 1210. Presumptions.
- 1211. Extrinsic aids to construction.
- 1212. — In general.
- 1213. — Construction by board or agency.
- 1214. Operation and effect in general.

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V. CONSTRUCTION, OPERATION, AND EFFECT.(Cont'd)

- 1215. Time of taking effect; retroactive operation.
- 1216. Applicability to persons or places.
- 1217. — In general.
- 1218. — Government and related entities.
- 1219. — Public utilities.
- 1220. Comprehensive or general plan.

(B) ARCHITECTURAL AND STRUCTURAL DESIGNS.

- 1225. In general.
- 1226. Building or setback lines.
- 1227. Height of buildings or structures.
- 1228. Area, frontage, and yard requirements.
- 1229. One-family, two-family, or multiple dwellings.

(C) USES AND USE DISTRICTS.

1. IN GENERAL.

- 1235. Uses in general.
- 1236. Boundaries of districts.
- 1237. Residential districts.
- 1238. — In general.
- 1239. — Apartment house districts.
- 1240. Business districts and uses in general.
- 1241. Commercial districts and uses in general.
- 1242. Industrial districts and uses in general.
- 1243. Agricultural uses, woodlands and rural zoning.
- 1244. Animals; stables and kennels.
- 1245. Automobile-related uses.
- 1246. — In general.
- 1247. — Sales and service.
- 1248. — Garages and parking.
- 1249. — Distance from particular structures or uses.
- 1250. Aviation and airports.
- 1251. Churches and religious uses.
- 1252. Clubs, fraternities, and sororities.
- 1253. Entertainment and recreation; theaters.
- 1254. Fences and hedges.
- 1255. Hospitals, clinics, and other health-related facilities.
- 1256. — In general.
- 1257. — Abortion and birth control facilities.

V. CONSTRUCTION, OPERATION, AND EFFECT.(Cont'd)

- 1258. — Mental health facilities.
- 1259. Hotels, lodging, and short-term rentals.
- 1260. Landfills and waste disposal; junkyards.
- 1261. Manufacturing.
- 1262. Maps, plats, and plans; subdivision regulations.
- 1263. Mining and minerals; sand and gravel.
- 1264. Mobile homes; trailer parks.
- 1265. Mortuaries, cemeteries, and mausoleums.
- 1266. Prisons, jails, and rehabilitative institutions.
- 1267. Public and low-income housing.
- 1268. Residential facilities and daycare.
- 1269. Restaurants and food services.
- 1270. Schools and education.
- 1271. Signs and billboards.
- 1272. Sexually-oriented businesses; nudity.
- 1273. Stores and sales.
- 1274. — In general.
- 1275. — Shopping centers and malls.
- 1276. — Alcoholic beverages.
- 1277. — Firearms.
- 1278. Telecommunications towers and facilities.
- 1279. Warehousing and storage.
- 1280. Water-related uses and regulations; flooding and wetlands.
- 1281. Moratorium regulations.
- 1282. Other particular terms and uses.

2. ACCESSORY USES AND BUILDINGS.

- 1285. Accessory uses in general.
- 1286. Particular accessory uses.
- 1287. Parking lots.
- 1288. Residence, accessory uses.
- 1289. — In general.
- 1290. — Artists and professionals.
- 1291. — Home occupations.
- 1292. Accessory buildings.
- 1293. — In general.
- 1294. — Garages.

VI. NONCONFORMING USES.

- 1300. In general.
- 1301. Particular uses or structures as nonconforming.

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VI. NONCONFORMING USES.(Cont'd)

- 1302. Existence of use in general.
- 1303. Contemplated or intended use.
- 1304. Building or use in course of construction.
- 1305. Legality or illegality of use.
- 1306. Continuance or change of use in general.
- 1307. Particular cases involving continuance or change of use.
- 1308. Enlargement or extension of use.
- 1309. — In general.
- 1310. — Area of use.
- 1311. — Increase in amount or intensity of use.
- 1312. Use of new instrumentalities.
- 1313. Repair, alteration, or reconstruction of buildings or structures.
- 1314. — In general.
- 1315. — New buildings or structures.
- 1316. — Restoration and repair of damaged or destroyed structure.
- 1317. Discontinuance or abandonment.
- 1318. — In general.
- 1319. — Cessation of use.
- 1320. — Change of use.

VII. ADMINISTRATION IN GENERAL.

- 1325. Boards and officers in general.
- 1326. — In general.
- 1327. — Appointment or election.
- 1328. — Term of office; vacancies.
- 1329. — Compensation and benefits.
- 1330. — Resignation, suspension, or removal.
- 1331. — Duties in general.
- 1332. — Liabilities.
 - (1). In general.
 - (2). Tort and common law liability.
 - (3). Statutory or constitutional liability.
 - (4). Criminal liability.
 - (5). Immunity.
- 1333. — Power and authority.
 - (1). In general.
 - (2). Discretion in general.
 - (3). Legislative, administrative, judicial, or quasi-judicial power.
- 1334. Rules and regulations.

VII. ADMINISTRATION IN GENERAL.(Cont'd)

- 1335. Proceedings in general.
- 1336. — In general.
- 1337. — Jurisdiction.
- 1338. — Parties and standing.
- 1339. — Notice and hearing.
 - (1). In general.
 - (2). Notice, appearance and pleading.
 - (3). Hearings and meetings in general.
 - (4). Evidence.
 - (5). Access; open meetings.
- 1340. — Determination.
 - (1). In general.
 - (2). Voting; bias and disqualification.
 - (3). Findings, reasons, and record.
 - (4). Conclusiveness and collateral attack.
- 1341. — Costs.
- 1342. — Rehearing and reconsideration.
- 1343. — Administrative review.

VIII. PERMITS, CERTIFICATES, AND APPROVALS.

(A) IN GENERAL.

- 1345. Nature and necessity in general.
- 1346. Nonconforming use.
- 1347. Power to grant.
- 1348. — In general.
- 1349. — Nature of power.
- 1350. Right to permission, and discretion.
- 1351. — In general.
- 1352. — Change of regulations as affecting right.
- 1353. Estoppel to claim or oppose.
- 1354. Grounds for grant or denial in general.
- 1355. Conditions attached to permission in general.
- 1356. Residential uses in general.
- 1357. Business, commercial, and industrial uses in general.
- 1358. Architectural and structural designs.
- 1359. — In general.
- 1360. — Family or multiple dwellings.
- 1361. Agricultural uses, woodlands and rural zoning.
- 1362. Animals; stables and kennels.
- 1363. Automobile-related uses.
- 1364. — In general.
- 1365. — Sales and service.

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VIII. PERMITS, CERTIFICATES, AND APPROVALS.(Cont'd)

- 1366. — Auto service/retail store combinations.
- 1367. — Garages and parking.
- 1368. Aviation and airports.
- 1369. Churches and religious uses.
- 1370. Entertainment and recreation; theaters and clubs.
- 1371. Fences and hedges.
- 1372. Hospitals, clinics, and other health-related facilities.
- 1373. — In general.
- 1374. — Abortion and birth control facilities.
- 1375. — Alcohol and drug treatment.
- 1376. — Mental health facilities.
- 1377. Hotels, lodging, and short-term rentals.
- 1378. Landfills and waste disposal; junkyards.
- 1379. Maps, plats, and plans; subdivisions.
- 1380. — In general.
- 1381. — Filing or approval requirement.
 - (1). In general.
 - (2). As condition to conveyance.
 - (3). As condition to grant of building permit.
 - (4). Street access as condition to grant of building permit.
 - (5). Determination of necessity for approval; classification.
 - (6). Other particular considerations.
- 1382. — Conditions and agreements.
 - (1). In general.
 - (2). Streets, improvements and utilities.
 - (3). Conveyance or dedication.
 - (4). Fees, bonds and in lieu payments.
 - (5). Liability on bonds.
 - (6). Other particular conditions or agreements.
- 1383. — Grounds for grant or denial; conformity to regulations.
 - (1). In general.
 - (2). Streets and roads; traffic considerations.
 - (3). Architectural and structural designs; area and lot considerations.
 - (4). Public utilities; water and sewage considerations.

VIII. PERMITS, CERTIFICATES, AND APPROVALS.(Cont'd)

- (5). Other particular considerations.
- 1384. Mining and minerals; sand and gravel.
- 1385. Mobile homes; trailer parks.
- 1386. Mortuaries, cemeteries, and mausoleums.
- 1387. Prisons, jails, and rehabilitative institutions.
- 1388. Public and low-income housing.
- 1389. Residential facilities and daycare.
- 1390. Restaurants and food services.
- 1391. Schools and education.
- 1392. Signs and billboards.
- 1393. Sexually-oriented businesses; nudity.
- 1394. Stores and sales.
- 1395. — In general.
- 1396. — Shopping centers and malls.
- 1397. — Alcoholic beverages.
- 1398. — Firearms.
- 1399. Telecommunications towers and facilities.
- 1400. Warehousing and storage.
- 1401. Water-related uses and regulations.
- 1402. Particular prior or nonconforming uses.
- 1403. Other particular uses.
- (B) PROCEEDINGS ON PERMITS, CERTIFICATES,
OR APPROVALS.
- 1410. In general.
- 1411. Nature of proceedings; legislative, judicial, or administrative action.
- 1412. Persons entitled to apply.
- 1413. Application; plans and specifications.
- 1414. Consent or objection of adjacent owners.
- 1415. Report or recommendation of board or officer.
- 1416. — In general.
- 1417. — Maps, plats, or plans; subdivisions.
- 1418. Notice and hearing.
- 1419. — In general.
- 1420. — Notice.
- 1421. — Hearings in general.
- 1422. — Evidence and fact questions.
- 1423. — Access; open meetings.
- 1424. Determination.
- 1425. — In general.

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VIII. PERMITS, CERTIFICATES, AND APPROVALS.(Cont'd)

- 1426. Scope of inquiry and matters considered.
- 1427. — Voting; bias and disqualification.
- 1428. — Time for determination.
- 1429. — Findings, reasons, conclusions, minutes or records.
- 1430. Rehearing or reconsideration.
- 1431. Administrative review.
- 1432. — In general.
- 1433. — Nature and form of remedy and jurisdiction.
- 1434. — Standing to appeal.
- 1435. — Exhaustion of remedies.
- 1436. — Procedure in general; timeliness.
- 1437. — Hearing and evidence.
- 1438. — Scope of review.
- 1439. — Determination.
- 1440. Fees and charges.

(C) EFFECT OF DETERMINATION OF PERMITS, CERTIFICATES, OR APPROVALS; REVOCATION.

- 1445. Effect of determination in general; res judicata and collateral estoppel.
- 1446. Successive applications.
- 1447. Form, requisites, and validity of permit or certificate in general.
- 1448. Construction and operation.
- 1449. — In general.
- 1450. — Maps, plats, or plans; subdivisions.
- 1451. Vested or property rights.
- 1452. Effect of violation of regulations.
- 1453. Duration of rights.
- 1454. Revocation or modification.
- 1455. — In general.
- 1456. — Grounds in general.
- 1457. — Illegality of permit.
- 1458. — Proceedings.
- 1459. — Maps, plats, or plans; subdivisions.
- 1460. Effect of change in regulations on permission granted.
- 1461. Tentative or preliminary approval.

IX. VARIANCES AND EXCEPTIONS.

(A) IN GENERAL.

- 1465. Nature and necessity in general.

IX. VARIANCES AND EXCEPTIONS.(Cont'd)

- 1466. Variance and exception distinguished.
- 1467. Permit, variance and alteration of regulations distinguished.
- 1468. Area and use variances distinguished.
- 1469. Power to grant in general.
- 1470. Nature and extent of power.
- 1471. Limitations on and sparing exercise of power.
- 1472. Right to variance or exception, and discretion.
- 1473. Grounds for grant or denial in general.
- 1474. Public interest or welfare.
- 1475. Harmony with, or impairment of regulations or plan.
- 1476. Effect of other applications or nonconforming uses.
- 1477. Hardship, loss, or injury.
- 1478. — In general.
- 1479. — Necessity of showing.
- 1480. — What constitutes in general.
- 1481. — Unique or peculiar hardship in general.
- 1482. — Self-created hardship; prior knowledge.
- 1483. — Profit or disadvantage; financial considerations.
- 1484. Proximity to other areas.
- 1485. Consent or objection of others.
- 1486. Conditions attached to grant.
- 1487. Residential uses in general.
- 1488. Business, commercial, and industrial uses in general.
- 1489. Architectural and structural designs.
- 1490. — In general.
- 1491. — Area variances in general.
- 1492. — Building or setback lines.
- 1493. — Height of buildings or structures.
- 1494. — Frontage requirements.
- 1495. — Family or multiple dwellings.
- 1496. Agricultural uses, woodlands and rural zoning.
- 1497. Animals; stables and kennels.
- 1498. Automobile-related uses.
- 1499. — In general.
- 1500. — Sales and service.
- 1501. — Auto service/retail store combinations.
- 1502. — Garages and parking.

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IX. VARIANCES AND EXCEPTIONS.(Cont'd)

- 1503. Aviation and airports.
- 1504. Churches and religious uses.
- 1505. Entertainment and recreation; theaters and clubs.
- 1506. Fences and hedges.
- 1507. Hospitals, clinics, and other health-related facilities.
- 1508. — In general.
- 1509. — Abortion and birth control facilities.
- 1510. — Alcohol and drug treatment.
- 1511. — Mental health facilities.
- 1512. Hotels, lodging, and short-term rentals.
- 1513. Landfills and waste disposal; junkyards.
- 1514. Mining and minerals; sand and gravel.
- 1515. Mobile homes; trailer parks.
- 1516. Mortuaries, cemeteries, and mausoleums.
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Individual Key Number Search – 110k1106

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